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Tuesday
December 3, 1985

Briefings on How To Use the Federal Register—
For information on briefings in Philadelphia, PA and Washington, DC, see announcement on the inside cover of this issue.

Selected Subjects

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Food Additives
Food and Drug Administration

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Defense Department
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National Aeronautics and Space Administration

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Selected Subjects

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

How To Cite This Publication: Use the volume number and the page number. Example: 50 FR 12345.

Government Property Management
General Services Administration

Hazardous Materials Transportation
Coast Guard

Hazardous Waste
Environmental Protection Agency

Marine Mammals
Fish and Wildlife Service

Mortgage Insurance
Housing and Urban Development Department

Old-Age, Survivors, and Disability Insurance
Social Security Administration

Pipeline Safety
Research and Special Programs Administration

Radio
Federal Communications Commission

Radio Broadcasting
Federal Communications Commission

Savings and Loan Association
Federal Home Loan Bank Board

Securities
Securities and Exchange Commission

Surface Mining
Surface Mining Reclamation and Enforcement Office

Television Broadcasting
Federal Communications Commission

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 2 1/2 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

PHILADELPHIA, PA

WHEN: Dec. 17; at 1 pm.
Dec. 18; at 9 am. (identical session)

WHERE: Room 3306/10,
William J. Green, Jr., Federal Building,
600 Arch Street, Philadelphia, PA.

RESERVATIONS: Laura Lewis,
Philadelphia Federal Information Center,
215-597-1709

WASHINGTON, DC

WHEN: January 17; at 9 am.

WHERE: Office of the Federal Register,
First Floor Conference Room,
1100 L Street NW., Washington, DC.

RESERVATIONS: Howard Landon 202-523-5227
Melanie Williams 202-523-5229 (TDD)

NOTE: There will be a sign language interpreter for hearing impaired persons at the Washington, DC briefing.

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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

GENERAL ACCOUNTING OFFICE

4 CFR Parts 6, 8, 9, 30, 33, 51, 52, 75, and 82

Revision of Authority Citations to Various Parts

AGENCY: General Accounting Office.

ACTION: Final regulation.

SUMMARY: These regulations revise the authority citations of various Parts of 4 CFR in order to bring them into compliance with the authority citation requirements appearing in 1 CFR 21.43 published on March 28, 1985 at 50 FR 12462–12469 and which became effective April 29, 1985. The authority citations are now required to be centralized at the part or subpart level and may no longer appear following individual sections. These revisions centralized the authority citations for nonconforming parts of 4 CFR at the part level.

EFFECTIVE DATE: December 3, 1985.

FOR FURTHER INFORMATION CONTACT: Richard T. Cambosos, Office of the General Counsel, Room 1016–E–12, United States General Accounting Office, 441 G Street NW., Washington, D.C. 20548. Tel.: (202) 275–5544.

List of Subjects

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4 CFR Part 9

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4 CFR Part 30

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4 CFR Part 33

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4 CFR Part 51

Accounting, Authority delegations, General Services Administration, Transportation.

4 CFR Part 52

Accounting General Accounting Office, Transportation.

4 CFR Part 75

Accounting, General Accounting Office, Government contracts.

4 CFR Part 82

Courts, General Accounting Office, Archives and Records.

Accordingly, Title 4 CFR is amended and revised as follows:

PART 6—[AMENDED]

1. An authority citation for Part 6 is added to read as set forth below and the authority citation following § 6.1 is removed:

Authority: 31 U.S.C. 732.

PART 8—[AMENDED]

2. An authority citation for Part 9 is added to read as set forth below and the authority citation following § 8.1 is removed:

Authority: 31 U.S.C. 732.

PART 9—[AMENDED]

3. An authority citation for Part 9 is added to read as set forth below and the authority citation following § 9.1 is removed:

Authority: 31 U.S.C. 733.

PART 30—[AMENDED]

4. An authority citation for Part 30 is added to read as set forth below and the authority citation following § 30.1 is removed:

Authority: 31 U.S.C. 711 and 3702.

PART 33—[AMENDED]

5. The authority citation for Part 33 is revised to read as set forth below and the authority citation following § 33.5 is removed:

Authority: 31 U.S.C. 711. Interpret or apply 5 U.S.C. 5582 and 5583.

PART 51—[AMENDED]

6. An authority citation for Part 51 is added as set forth below and the authority citation following § 51.1 is removed:

Authority: 31 U.S.C. 711. Interpret or apply 31 U.S.C. 3511 and 3512.

PART 52—[AMENDED]

7. The authority citation for Part 52 is revised to read as set forth below and the authority citation following §52.2 is removed.

Authority: 31 U.S.C. 711. Interpret or apply 31 U.S.C. 3511, 3512, 3513, 3526 and 3529; sec. 901(a), 49 Stat. 2015, 46 U.S.C. 1241(a); sec. 5, 88 Stat. 2104, 49 U.S.C. 1517.

PART 75—[AMENDED]

8. An authority citation for Part 75 is added to read as set forth below and the authority citation following § 75.1 is removed:

Authority: 31 U.S.C. 711 and 3511.

PART 82—[AMENDED]

9. An authority citation for Part 82 is added to read as set forth below and the authority citations following all the sections of Part 82 are removed.

Authority: 31 U.S.C. 711, 713, 714, 718, 3523, 2524, 2526, and 3529.

Charles A. Bowsher,
Comptroller General of the United States.

[FR Doc. 85–28687 Filed 12–2–85; 8:45 am]
BILLING CODE 1610–01–M

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Parts 404, 408, 409, 411, 413, and 439

[Docket No. 0046A]

Crop Insurance Regulations; Various

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby adopts, as a final rule, an interim rule which was published in the **Federal Register** on August 28, 1985 (50 FR 34801). The

interim rule amended the Eastern and Westerm U.S. Apple, Arizona-California Citrus, Almond, Grape, and Texas Citrus Crop Insurance regulations, effective for the 1985 crop year only, by changing the date for filing contract changes as specified in the policies for insuring such crops. The intended effect of this rule is to provide additional time in which to file changes made in the contracts for such crops for actuarial purposes. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

EFFECTIVE DATE: December 3, 1985.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures.

Merritt W. Sprague, Manager, FCIC, has determined and certifies that this action (1) is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, Published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

On August 28, 1985, FCIC published an interim rule, effective upon publication in the **Federal Register** at 50 FR 34801, amending the Eastern and Western U.S. Apple, Arizona-California Citrus, Almond, Grape, and Texas Citrus Crop Insurance Regulations (7 CFR Parts 404, 408, 409, 411, 413, and 439), effective for the 1985 crop year only, to change the date for filing contract changes specified in the policies for insuring such crops.

Written comments on the interim rule were solicited by FCIC for 60 days after publication of the rule in the **Federal Register**, and the rule was scheduled for review so that any amendments made necessary by public comment could be published in the **Federal Register** as quickly as possible.

No comments were received, therefore, the interim rule is hereby adopted as final.

List of Subjects in 7 CFR Parts 404, 408, 409, 411, 413, and 439

Crop Insurance; Eastern and Western U.S. Apple, Arizona-California Citrus, Almond, Grape, and Texas Citrus.

Final Rule

Accordingly, the Interim Rule published in the **Federal Register** on August 28, 1985, at 50 FR 34801, is hereby adopted as final.

Authority: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

Done in Washington, D.C. on November 4, 1985.

Edward Hews,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 85–28694 Filed 12–2–85; 8:45 am]

BILING CODE 3410-08-M

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7 CFR Parts 415, 417, 418, 419, 427, 429, and 430

[Docket No. 0045A]

Crop Insurance Regulations; Various

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby adopts, as a final rule, an interim rule which was published in the **Federal Register** on May 30, 1985 (50 FR 22969). The interim rule amended the Barley, Forage Production, Oat, Rye, Sugar Beet, Sugarcane, and Wheat Crop Insurance regulations, effective for the 1985 crop year only, by changing the date for filing contract changes as specified in the policies for insuring such crops. The intended effect of this rule is to provide additional time in which to file changes made in the contracts for such crops for actuarial purposes. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

EFFECTIVE DATE: December 3, 1985.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures.

Merritt W. Sprague, Manager, FCIC, has determined and certifies that this action (1) is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

On May 30, 1985, FCIC published an interim rule, effective upon publication in the **Federal Register** at 50 FR 22969, amending the Barley, Forage Production, Oat, Rye, Sugar Beet, Sugarcane, and Wheat Crop Insurance Regulations (7 CFR Parts 415, 417, 418, 419, 427, and

430), effective for the 1985 crop year only, to change the date for filing contract changes specified in the policies for insuring such crops.

Written comments on the interim rule were solicited by FCIC for 60 days after publication of the rule in the **Federal Register**, and the rule was scheduled for review so that any amendments made necessary by public comment could be published in the **Federal Register** as quickly as possible.

No comments were received, and the interim rule is hereby adopted as final.

List of Subjects in 7 CFR Parts 415, 417, 419, 427, 429, and 430

Crop Insurance; Barley, Forage Production, Oat, Rye, Sugar Beet, Sugarcane, and Wheat.

Final Rule

Accordingly, the Interim Rule published in the **Federal Register** on May 30, 1985, at 50 FR 22969, is hereby adopted as final.

Authority: Secs. 506, 516, Pub. L. 75-430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

Done at Washington, DC on November 4, 1985.

Edward Hews,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 85-28695 Filed 12-2-85; 8:45 am]

BILLING CODE 3410-08-M

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7 CFR Part 423

[Docket No. 2658S]

Flax Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby revises and reissues the Flax Crop Insurance Regulations (7 CFR Part 423), effective for the 1986 and succeeding crop years. The intended effect of this rule is to: (1) Change to a mandatory "Actual Production History" (APH) basis by removing the Premium Adjustment Table and providing for cancellation for not furnishing records; (2) add as a cause of loss the unavoidable failure of irrigation water supply; (3) change the method of computing indemnities when acreage, share or practice is underreported; (4) shorten the time in which to give notice of loss; (5) change the method of calculating the insured's share of an indemnity on crops transferred before harvest; (6) add definitions for the terms "ASCS" and the "Loss ratio"; and (7) redefine "county" to clarify when land located outside the county is included in the county. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

EFFECTIVE DATE: December 31, 1985.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation No. 1512-1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is August 1, 1990.

Merritt W. Sprague, Manager, FCIC, has determined and certifies that this action (1) is not a major rule as defined by Executive Order No. 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Other than minor changes in language and format, the principal changes in the flax policy are:

1. Section 1.a.—Add the failure of the irrigation water supply because of unavoidable cause after planting as an insurable cause of loss. This clarifies intent since it was implied as a cause of loss in Section 2.e.

2. Section 2.c.—Add a clause to change the method of calculating the insured's share of an indemnity on crops transferred before harvest. This limits indemnities to the insured's insurable interest at the time of loss.

3. Section 5.—Remove the Premium Adjustment Table. The crop will be insured on an actual production history (APH) basis. Coverages will, therefore, reflect the actual production history of the crop on the unit. Insureds with good loss experience who are now receiving a premium discount are protected since they may retain a discount under the present schedule through the 1990 crop year or until their lose experience causes them to lose the advantage, whichever is earlier.

Remove the provisions for the transfer of insurance experience and for premium computation when participation has not been continuous. Deletion of the Premium Adjustment Table eliminates the need for these provisions.

4. Section 8.a.—Shorten from 30 days to 10 days the time an insured has to give notice of loss when claiming an indemnity. This will allow FCIC to determine indemnities more timely and efficiently.

5. Section 9.d.—Change the method of computing the indemnity when acres are underreported. The production from all acres will be applied against the reported acres in calculating indemnities. This change will reduce indemnities when acres are underreported and will reduce the complexity of calculations.

6. Section 9.e.—Specify the method of determining the production to count.

7. Section 15.c.—Add a clause to cancel the contract if production history is not furnished by a certain date. An exception will be allowed if the insured can show, prior to the cancellation date, that records are unavailable due to conditions beyond the insured's control. This clause is required by the proposed change to mandatory APH.

8. Section 17.—Add definitions for "ASCS" and "Loss ratio" for clarity. Amend the "county" definition to clarify when land located outside the county is to be included in the county.

On Monday, September 9, 1985, FCIC published a notice of proposed rulemaking in the **Federal Register** at 50 FR 36584, revising and reissuing the Flax Crop Insurance Regulations (7 CFR Part 423), effective for the 1986 and succeeding crop years. The public was given 30 days in which to submit written

comments, data, and opinions on the rule.

No comments were received in direct response to this proposed rule. However, on September 4–5, 1985, the Board of Directors, FCIC held informal meetings in Hearing Room B, Interstate Commerce Commission Building Washington, DC, for the purpose of receiving comments from interested parties on the Actual Production History (APH) method of insurance and on the proposal to restrict unit division by removing unit division guidelines from policies. Those concepts were included in the proposed rule.

The APH concept of yield guarantees establishes a direct relationship between proven production capability of the individual insured producer, and the insurance guarantee or the premium rates. It requires the insured producer to submit annual records of insured production as a condition of continued insurability.

The determination to eliminate applicable unit division guidelines restricts unit division to include all the insurable crop grown within a county with no allowance for further division beyond those contained in the crop insurance policies.

Comments on the proposed regulations were received from six representatives of the private insurance industry, one member of Congress, fifteen insurance agents, four representatives of special interest groups, and five farmers.

Those in opposition to the proposed regulations generally argued that they would decrease the marketability of crop insurance by making the resulting insurance offer less attractive to potential purchasers. Many predicted a substantial level of cancellation by current contract holders if the proposed regulations become effective.

Argument against the proposed requirement for records submission as a condition of continued insurance eligibility included: (1) Many farmers would not be willing to furnish records establishing annual production unless they have a loss and a potential indemnity; (2) an economic incentive like a reduced future yield guarantee is preferable to cancellation; and (3) the APH system as a whole is cumbersome, complex, and more difficult to administer than an area coverage plan.

Many commentators recommended that FCIC develop a plan to offer reduced insurance guarantees when a producer failed to voluntarily furnish records. Most comments supported the APH concept as a means of making an equitable insurance offer to the better producers of an area; however, many of the same group requested simplification of program procedures. Several comments recomended the establishment of a new method to reduce the impact of severe loss years upon yield guarantees for the future. A few comments recommended a return to an area coverage program as a means of retaining the participation of those whose recent production has not equaled former area coverage guarantees.

The comments received were fully considered in the course of arriving at the decision modifying the proposed rule.

The rationale for the initial adoption of the APH concept was to correct the problem of adverse selection inherent in the previous area coverage plans of insurance. Adverse selection occurs when the best insurance offer is made to the highest risk producer and the poorest insurance offer to made to the lowest risk producer. It is characterized by having insured clients with higher than average risk expectations without commensurate higher premium rates. Adverse selection results in higher than expected losses and ultimately in higher premium rates and thus, over the long term, severely limits participation levels.

Adverse selection is best addressed by establishing a direct relationship between proven production capability of individual producers and their insurance guarantee and premium rates. The APH program accomplishes this objective.

Records of production are basic to a yield protection program of insurance. There is no logical alternataive to requiring records if such a program is to succeed over an extended period of time. The APH concept, linking records to guarantees, is clearly preferable to any extension of the area coverage concept. The latter can only lead to further adverse selection. The ultimate result is the program serving only the lowest producing farmers on the highest risk land.

The premise that farmers will choose to cancel insurance participation in preference to furnishing annual records of production after the close of harvest or marketing season is rejected. The need to have such records of production for other business purposes, including for share rent settlement purposes, for financial statements in the event of the use of borrowed funds for operations, and for the submission of income tax returns, combined with the need of such records for farm management purposes, make such records readily available for most producers. The Flax program is either an area coverage or an individual yield concept which, under the Individual Yield Coverage Plan (IYCP) program, requires submission of production records. This requirement has not had an adverse effect on the program. The records are available. No legitimate reason exists for failure to support a requested yield guarantee by furnishing production records.

If the sole reason for unwillingness to submit records of production lies in the fact that such submission will result in a lower than otherwise obtainable yield guarantee for the future, then the producer is seeking to be overinsured in relation to his proven capability. While past performance is not an absolute guarantee of future yield expectations, it is the best indicator which can be measured objectively.

The FCIC would be violating its public trust if it were not to use the best system possible to establish yield guarantees which fairly reflect yield expectations. Considering the administrative changes to procedure which are to be implemented, the objections to the APH program raised in the comments have been fully and fairly considered and are regarded as an insufficient basis for reversal of previous proposed regulations.

FCIC, in response to requests from the producers and the participating insurance industry, has taken administrative action to ease the burden of keeping the required records and to address problems in program administration. These actions were taken with regard to all crops which are under an APH principle of insurance.

Arguments against the proposed unit division change included: (1) Separate insurance units for widely dispersed tracts of farmland, differing topography or soil types, and differing cultural or farm management practices are necessary to maintain or build participation levels; (2) spot causes of loss like hail and flood generally damage only a relatively small portion of the total planted acreage of most farms, thus the more units allowed, the greater the protection offered; (3) the proposed unit structure would result in discrimination or unfair treatment among producers; (4) the producer is entitled to an indemnity payment under the crop insurance program when he suffers a loss on a portion of his planted acreage even when overall yields are normal; and (5) expected reductions in participation would result in increased adverse selection. Many agreed that the current unit structure is less than satisfactory, but argued that FCIC should delay implementation of the proposed rule to provide time for further study and analysis of alternative approaches.

FCIC has determined to retain the present unit structure and institute further studies which are to be presented to the Board of Directors for consideration at the first meeting of the Board after February 1, 1986.

It is the objective of the FCIC to provide producers of agricultural commodities a program of insurance with an insurance unit structure which:

—Provides a disaster protection plan of insurance which meets the needs of producers at the lowest possible cost per acre.
—Minimizes the potential for fraud and abuse.
—Reduces the administrative costs of FCIC and writing companies.
—Minimizes the burden upon producers.
—Improves the actuarial soundness of the program.
—Simplifies and standardizes the unit definition for all programs.

The Board of Directors has discussed the unit definition issue on several occasions over the past three years.

The current standard insurance policy language defines "unit" as:

"Unit" means all insurable acreage of (name of crop) in the county on the date of planting for the crop year:

(1) In which you have a 100 percent share; or

(2) Which is owned by one entity and operated by another entity on a share basis.

Land rented for cash, a fixed commodity payment, or any consideration other than a share in the (name of crop) on such land shall be considered as owned by the lessee. Land which would otherwise be one unit may be divided according to applicable guidelines on file in your county service office.

As a matter of practice, units are often divided beyond that allowed by the policy unit definition to permit separate units by section or ASCS farm serial number. This is intended to be permitted only when verifiable records of production on such a basis exist.

The more insurance units allowed on a single contract, the higher the potential for fraud and abuse, the higher the costs of administration, and the larger the likelihood of legitimate loss.

The FCIC Board of Directors has been increasingly concerned about the high loss ratios (about 150%) experienced by the Corporation in the 1980–1984 period. It has refused to order a major premium rate increase because of its belief that normal weather and sound program design will prove the existing rates adequate over the long term. The Board has chosen a course of action to reduce adverse selection, lessen the potential for fraud and abuse, and improve the equitability of the insurance offer between options and areas of operation.

The Board believes that these actions are preferable to the alternative of major increases in premiums to producers.

The level of program participation by potential insureds is of great interest to the FCIC. The potential users of the program, the farmers of this nation, have a clear need for the protection offered. Higher levels of participation are desired because such expanded use of a crop insurance as a risk management tool can reduce the adverse economic impacts of crop failure on not only individual producers but the state and community in which they live. Crop insurance as a device to offer disaster assistance to farmers is much preferred to the alternative programs offered in the past in terms of equitability and cost to the public. Further, higher levels of participation tend to remove adverse selection which continues to be a problem of program administration.

There is an apparent need to modify the insurance unit determination practices of the past. Most of the comments received recommended delay and further study of the issues relating to insurance unit definition and that recommendation is accepted as being in the best interest of the program at this time.

The management of FCIC has been directed to present the results of further study to the Board of Directors at its first meeting after February 1, 1986. Interested parties are requested to offer input or comments to the Board. Any proposal presented during the requested timeframe should not only consider the impact upon program participation but also have a positive impact upon the actuarial soundness of the programs and the costs and burden of administration.

The most significant objection raised in the comment period was the opinion that significant adverse perception of the previously proposed change would lead to large numbers of cancellations by insured producers. The FCIC determination to permit the continued use of guidelines allowing further unit division will encourage continued growth in the program without undue risk of higher than normal cancellations.

These actions respond positively to the marketing-related concerns expressed regarding the previously proposed changes to the insurance regulations. They should have minimal adverse impact upon the attractiveness of the insurance offer and thus little negative impact upon participation rates.

Since policy changes must be on file by December 31, 1985, good cause is shown for making this rule effective in less than 30 days.

Therefore, with the exception of minor changes in language and format, the proposed rule, amended as outlined above, is hereby adopted.

List of Subjects in 7 CFR Part 423

Crop insurance, Flax.

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby revises and reissues the Flax Crop Insurance Regulations (7 CFR Part 423), effective for the 1986 and succeeding crop years, to read as follows:

PART 423—FLAX CROP INSURANCE REGULATIONS

Subpart—Regulations for the 1986 and Succeeding Crop Years

Sec.

423.1 Availability of flax crop insurance.
423.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.
423.3 OMB control numbers.
423.4 Creditors.
423.5 Good faith reliance on misrepresentation.
423.6 The contract.
423.7 The application and policy.

Authority: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

§ 423.1 Availability of flax crop insurance.

Insurance shall be offered under the provisions of this subpart on flax in counties within the limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act, as amended. The counties shall be designated by the Manager of the Corporation from those approved by the Board of Directors of the Corporation.

§ 423.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.

(a) The Manager shall establish premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed for flax which will be included in the actuarial table on file in the applicable service offices for the county and which may be changed from year to year.

(b) At the time the application for insurance is made, the applicant will elect a coverage level and price at which indemnities will be computed from among those levels and prices contained in the actuarial table for the crop year.

§ 423.3 OMB control numbers.

OMB control numbers are contained in Subpart H of Part 400, Title 7 CFR.

§ 423.4 Creditors.

An interest of a person in an insured crop existing by virtue of a lien, mortgage, garnishment, levy, execution, bankruptcy, involuntary transfer or other similar interest shall not entitle the holder of the interest to any benefit under the contract.

§ 423.5 Good faith reliance on misrepresentation.

Nothwithstanding any other provision of the flax insurance contract, whenever: (a) An insured under a contract of crop insurance entered into under these regulations, as a result of a misrepresentation or other erroneous action or advice by an agent or employee of the Corporation: (1) Is indebted to the Corporation for additional premiums; or (2) has suffered a loss to a crop which is not insured or for which the insured is not entitled to an indemnity because of failure to comply with the terms of the insurance contract, but which the insured believed to be insured, or believed the terms of the insurance contract to have been complied with or waived; and (b) the Board of Directors of the Corporation, or the Manager in cases involving not more than $100,000.00, finds that: (1) An agent or employee of the Corporation did in fact make such misrepresentation or take other erroneous action or give erroneous advice; (2) said insured relied thereon in good faith; and (3) to require the payment of the additional premiums or to deny such insured's entitlement to the indemnity would not be fair and equitable, such insured shall be granted relief the same as if otherwise entitled thereto. Application for relief under this section must be submitted to the Corporation in writing.

§ 423.6 The contract.

The insurance contract shall become effective upon the acceptance by the Corporation of a duly executed application for insurance on a form prescribed by the Corporation. The contract shall cover the flax crop as provided in the policy. The contract shall consist of the application, the policy, and the county actuarial table. Any changes made in the contract shall not affect its continuity from year to year. The forms referred to in the contract are available at the applicable service offices.

§ 423.7 The application and policy.

(a) Application for insurance on a form prescribed by the Corporation may be made by any person to cover such person's share in the flax crop as landlord, owner-operator, or tenant. The application shall be submitted to the Corporation at the service office on or before the applicable closing date on file in the service office.

(b) The Corporation may discontinue the acceptance of applications in any county upon its determination that the insurance risk is excessive, and also, for the same reason, may reject any individual application. The Manager of the Corporation is authorized in any crop year to extend the closing date for submitting applications in any county, by placing the extended date on file in the applicable service offices and publishing a notice in the Federal Register upon the Manager's determination that no adverse selectivity will result during the extended period. However, if adverse conditions should develop during such period, the Corporation will immediately discontinue the acceptance of applications.

(c) In accordance with the provisions governing changes in the contract contained in policies issued under FCIC regulations for the 1986 and succeeding crop years, a contract in the form provided for in this subpart will come into effect as a continuation of a flax insurance contract issued under such prior regulations, without the filing of a new application.

(d) The application for the 1986 and succeeding crop years is found at Subpart D of Part 400—General Administrative Regulations (7 CFR 400.37, 400.38) and may be amended from time to time for subsequent crop years. The provisions of the Flax Crop Insurance Policy for the 1986 and succeeding crop years are as follows:

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Flax—CROP INSURANCE POLICY

(This is a continuous contract. Refer to Section 15.)

AGREEMENT TO INSURE: We will provide the insurance described in this policy in return for the premium and your compliance with all applicable provisions.

Throughout this policy, "you" and "your" refer to the insured shown on the accepted Application and "we," "us," and "our" refer to the Federal Corp Insurance Corporation.

Terms and Conditions

1. Causes of Loss.

a. The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

(1) Adverse weather conditions;

(2) Fire;

(3) Insects;

(4) Plant disease;

(5) Wildlife;

(6) Earthquake;

(7) Volcanic eruption; or

(8) If applicable, failure of the irrigation water supply due to an unavoidable cause occurring after the beginning of planting; unless those causes are excepted, excluded, or limited by the actuarial table or section 9e(5).

b. We will not insure against any loss of production due to:

(1) The neglect, mismanagement, or wrongdoing of you, any member of your household, your tenants, or employees;

(2) The failure to follow recognized good flax farming practices;

(3) The failure to follow good flax irrigation practices;

(4) The failure or breakdown of irrigation equipment or facilities;

(5) The impoundment of water by any governmental, public, or private dam or reservoir project; or

(6) Any cause not specified in section 1a as an insured loss.

2. Crop, Acreage, and Share Insured.

a. The crop insured will be flaxseed ("flax") planted for harvest as seed, grown on insured acreage, and for which a guarantee and premium rate are provided by the actuarial table.

b. The acreage insured for each crop year will be flax planted on insurable acreage as designated by the actuarial table and in which you have a share, as reported by you or as determined by us, whichever we elect.

c. The insured share is your share as landlord, owner-operator, or tenant in the insured flax at the time of planting. However, only for the purpose of determining the amount of idemnity, your share will not exceed your share on the earlier of:

(1) The time of loss; or

(2) The beginning of harvest.

d. We do not insure any acreage:

(1) If the farming practices carried out are not in accordance with the farming practices for which the premium rates have been established;

(2) Which is irrigated and an irrigated practice is not provided by the actuarial table unless you elect to insure the acreage as nonirrigated by reporting it as insurable under section 3;

(3) Which is destroyed, it is practical to replant to flax, and such acreage is not replanted;

(4) Initially planted after the final planting date contained in the actuarial table, unless you agree, in writing, on our form to coverage reduction;

(5) Of volunteer flax;

(6) Planted to a type or variety of flax not established as adapted to the area or excluded by the actuarial table; or

(7) Planted with another crop except perennial grasses or legumes other than vetch.

e. If insurance is provided for an irrigated practice you must report as irrigated only the acreage for which you have adequate facilities and water, at the time of planting, to carry out a good flax irrigation practice.

f. Acreage which is planted for the development or production of hybrid seed or for experimental purposes is not insured, unless we agree, in writing, to insure such acreage.

g. We may limit the insured acreage to any acreage limitation established under any Act of Congress if we advise you of the limit prior to planting.

3. Report of Acreage, Share, and Practice.

You must report on our form:

a. All the acreage of flax in the county in which you have a share;

b. The practice; and

c. Your share at the time of planting.

You must designate separately any acreage that is not insurable. You must report if you do not have a share in any flax planted in the county. This report must be submitted annually on or before the reporting date established by the actuarial table. All indemnities may be determined on the basis of information you submit on this report. If you do not submit this report by the reporting date, we may elect to determine, by unit, the insured acreage, share, and practice or we may deny liability on any unit. Any report submitted by you may be revised only upon our approval.

4. Production Guarantees, Coverage Levels, and Prices for Computing Indemnities.

a. The production guarantees, coverage levels, and prices for computing indemnities are in the actuarial table.

b. Coverage level 2 will apply if you do not elect a coverage level.

c. You may change the coverage level and price election on or before the sales closing date as established by the actuarial table for submitting applications for the crop year.

5. Annual Premium.

a. The annual premium is earned and payable at the time of planting. The amount is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share at the time of planting.

b. Interest will accrue at the rate of one and one-half percent (1-½%) simple interest per calendar month, or any part thereof, on any unpaid premium balance starting on the first day of the month following the first premium billing date.

c. If you are eligible for a premium reduction in excess of 5 percent based on your insuring experience through the 1984 crop year under the terms of the experience table contained in the flax policy in effect for the 1985 crop year, you will continue to receive the benefit of that reduction subject to the following conditions:

(1) No premium reduction will be retained after the 1990 crop year;

(2) The premium reduction will not increase because of favorable experience;

(3) The premium reduction will decrease because of unfavorable experience in accordance with the terms of the policy in effect for the 1985 crop year;

(4) Once the loss ratio exceeds .80, no further premium reduction will apply; and

(5) Participation must be continuous.

6. Deductions for Debt.

Any unpaid amount due us may be deducted from any indemnity payable to you or from any loan or payment due you under any Act of Congress or program administered by the United States Department of Agriculture or its Agencies.

7. Insurance Period.

Insurance attaches when the flax is planted and ends at the earliest of:

(a) total destruction of the flax;

(b) combining, threshing, or removal from the field;

(c) final adjustment of a loss; or

(d) October 31 following planting.

8. Notice of Damage or Loss.

a. In case of damage or probable loss:

(1) You must give us written notice if:

(a) During the period before harvest, the flax on any unit is damaged and you decide not to further care for or harvest any part of it;

(b) you want our consent to put the acreage to another use; or

(c) after consent to put acreage to another use is given, additional damage occurs.

Insured acreage may not be put to another use until we have appraised the flax and given written consent. We will not consent to another use until it is too late to replant. You must notify us when such acreage is put to another use.

(2) You must give us notice of probable loss at least 15 days before the beginning of harvest if you anticipate a loss on any unit.

(3) If probable loss is later determined, immediate notice must be given and a representative sample of the unharvested flax (at least 10 feet wide and the entire length of the field) must remain unharvested for a period of 15 days from the date of notice, unless we give you written consent to harvest the sample.

(4) In addition to the notices required by this section, if you are going to claim an indemnity on any unit, you must give us notice not later than 10 days after the earliest of:

(a) total destruction of the flax on the unit;

(b) harvest of the unit; or

(c) October 31 following planting.

b. You must obtain written consent from us before you destroy any of the flax which is not to be harvested.

c. We may reject any claim for indemnity if you fail to comply with any of the requirements of this section or section 9.

9. Claim for Indemnity.

a. Any claim for indemnity on a unit must be submitted to us on our form not later than 60 days after the earliest of:

(1) Total destruction of the flax on the unit;

(2) Harvest of the unit; or

(3) October 31 following planting.

b. We will not pay any indemnity unless you:

(1) establish the total production of flax on the unit and that any loss of production has been directly caused by one or more of the insured causes during the insurance period; and

(2) furnish all information we require concerning the loss.

c. The idemnity will be determined on each unit by:

(1) multiplying the insured acreage by the production guarantee;

(2) subtracting therefrom the total production of flax to be counted (see section 9e);

(3) multiplying the remainder by the price election; and

(4) multiplying this result by your share.

d. If the information reported by you under section 3 of the policy results in a lower premium than the actual premium determined to be due, the production guarantee on the unit will be computed on the information reported, but all production from the insurable acreage, whether or not reported as insurable, will count against the production guarantee.

e. The total production (in bushels) to be counted for a unit will include all harvested and appraised production.

(1) Mature flax which, due to insurable causes, has a test weight of less than 47 pounds per bushel or, as determined by a grain grader licensed by the Federal Grain Inspection Service or under the United States Warehouse Act, contains more than 15 percent damaged flaxseed, will be adjusted by:

(a) dividing the value per bushel of the insured flax by the price per bushel of U.S. No. 2 flax; and

(b) multiplying the result by the number of bushels of insured flax.

The applicable price for No. 2 flax will be the local market price on the earlier of the day the loss is adjusted or the day insured flax in sold.

(2) Appraised production to be counted will include:

(a) Unharvested production or harvested acreage and potential production lost due to uninsured causes and failure to follow recognized good flax farming practices;

(b) Not less than the guarantee for any acreage which is abandoned or put to another use without or prior written consent or damaged solely by an uninsured cause; and

(c) Any appraised production on unharvested acreage.

(3) Any appraisal we have made on insured acreage for which we have given written consent to be put to another use will be considered production unless such acreage is:

(a) Not put to another use before harvest of flax becomes general in the county and reappraised by us;

(b) Further damaged by an insured cause and reappraised by us; or

(c) Harvested.

(4) The amount of production of any unharvested flax may be determined on the basis of field appraisals conducted after the end of the insurance period.

(5) If you elect to exclude hail and fire as insured causes of loss and the flax is damaged by hail or fire, appraisals will be made in accordance with Form FCI-78, "Request to Exclude Hail and Fire".

f. You must not abandon any acreage to us.

g. You may not sue us unless you have complied with all policy provisions. If a claim is denied, you may sue us in the United States District Court under the provisions of 7 U.S.C. 1508(c). You must bring suit within 12 months of the date notice of denial is received by you.

h. We have a policy for paying your indemnity within 30 days of our approval of your claim, or entry of a final judgment against us. We will, in no instance, be liable

for the payment of damages, attorney's fees, or other charges in connection with any claim for indemnity, whether we approve or disapprove such claim. We will, however, pay simple interest computed on the net indemnity ultimately found to be due by us or by a final judgement from and including the 61st day after the date you sign, date, and submit to us the properly completed claim for indemnity form, if the reason for our failure to timely pay is not due to your failure to provide information or other material necessary for the computation or payment of the indemnity. The interest rate will be that established by the Secretary of the Treasury under Section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611), and published in the **Federal Register** semiannually on or about January 1 and July 1. The interest rate to be paid on any indemnity will vary with the rate announced by the Secretary of the Treasury.

i. If you die, disappear, or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved after the flax is planted for any crop year, any indemnity will be paid to the persons determined to be beneficially entitled thereto.

j. If you have other fire insurance, fire damage occurs during the insurance period, and you have not elected to exclude fire insurance from this policy, we will be liable for loss due to fire only for the smaller of the amount:

(1) Of indemnity determined pursuant to this contract without regard to any other insurance; or

(2) By which the loss from fire exceeds the idemnity paid or payable under such other insurance.

For the purpose of this section, the amount of loss from fire will be the difference between the fair market value of the production on the unit before the fire and after the fire.

10. Concealment or Fraud.

We may void the contract on all crops insured without affecting your liability for premiums or waiving any right, including the right to collect any amount due us if, at any time, you have concealed or misrepresented any material fact or committed any fraud relating to the contract. Such voidance will be effective as of the beginning of the crop year with respect to which such act or omission occurred.

11. Transfer of right to indemnity on insured share.

If you transfer any part of your share during the crop year, you may transfer your right to an indemnity. The transfer must be on our form and approved by us. We may collect the premium from either you or your transferee or both. The transferee will have all rights and responsibilities under the countract.

12. Assignment of Indemnity.

You may assign to another party your right to an indemnity for the crop year, only on our form and with our approval. The assignee will have the right to submit the loss notices and forms required by the contract.

13. Subrogation. (Recovery of loss from a third party.)

Because you may be able to recover all or a part of you loss from someone other than us, you must do all you can to preserve any such right. If we pay you for your loss, then your right of recovery will at our option belong to us. If we recover more than we paid you plus our expenses, the excess will be paid to you.

14. Records and Access to Farm.

Your must keep, for two years after the time of loss, records of the harvesting, storage, shipment, sale, or other disposition of all flax produced on each unit, including separate records showing the same information for production from any uninsured acreage. Failure to keep and maintain such records may, at our option, result in cancellation of the contract prior to the crop year to which the records apply, assignment of production to units by us, or a determination that no indemnity is due. Any person designated by us will have access to such records and the farm for purposes related to the contract.

15. Life of Contract: Cancellation and Termination.

a. This contract will be in effect for the crop year specified on the application and may not be cancelled by you for such crop year. Thereafter, the contract will continue in force for each succeeding crop year unless canceled or terminated as provided in this section.

b. This contract may be canceled by either you or us for any succeeding crop year by giving written notice on or before the cancellation date preceding such crop year.

c. Ninety days prior to the cancellation date for any crop year you must:

(1) Furnish to the Corporation, satisfactory production records for the previous crop year or the contract will be cancelled for the subsequent crop year; or

(2) Show to our satisfaction that the records are not available because of conditions beyond your control, such as fire, flood or other natural disaster. (If this subsection (2) applies, the Field Actuarial Office may assign a yield for the year for which the records are unavailable.)

You may furnish the records required by this section for any crop year at least 90 days prior to that crop year's cancellation date. Your election of this option will result in the inclusion of that crop year's production information in the next crop year's yield guarantee.

d. This contract will terminate as to any crop year if any amount due us on this or any other contract with you is not paid on or before the termination date preceding such crop year for the contract on which the amount is due. The date of payment of the amount due if deducted from:

(1) An indemnity, will be the date you sign the claim; or

(2) Payment under another program administered by the United States Department of Agriculture, will be the date both such other payment and setoff are approved.

e. The cancellation and termination dates are April 15.

f. If you die or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved, the contract will terminate as of the date of death, judical declaration, or dissolution. If such event occurs after insurance attaches for any crop year, the contract will continue in force through the crop year and terminate at the end thereof. Death of a partner in a partnership will dissolve the partnership unless the partnership agreement provides otherwise. If two or more persons having a joint interest are insured jointly, death of one of the persons will dissolve the joint entity.

g. The contract will terminate if no premium is earned for 5 consecutive years.

16. Contract Changes.

We may change any terms and provisions of the contract from year to year. If your price election at which indemnities are computed is no longer offered, the actuarial table will provide the price election which you are deemed to have elected. All contract changes will be available at your service office by December 31 preceding the cancellation date. Acceptance of any change will be conclusively presumed in the absence of notice from you to cancel the contract.

17. Meaning of Terms.

For the purposes of flax crop insurance:

a. "Actuarial table" means the forms and related material for the crop year approved by us which are available for public inspection in your service office, and which show the production guarantees, coverage levels, premium rates, prices for computing indemnities, practices, insurable and uninsurable acreage, and related information regarding flax insurance in the county.

b. "ASCS" means the Agricultural Stabilization and Conservation Service of the United States Department of Agriculture.

c. "County" means:

(1) the county shown on the application;

(2) any additional land located in a local producing area bordering on the county, as shown by the actuarial table; and

(3) any land identified by an ASCS farm serial number for the county but physically located in another county.

d. "Crop year" means the period within which the flax is normally grown and will be designated by the calendar year in which the flax is normally harvested.

e. "Harvest" means the completion of combining or threshing of flax on the unit.

f. "Insurable acreage" means the land classified as insurable by us and shown as such by the actuarial table.

g. "Insured" means the person who submitted the application accepted by us.

h. "Loss ratio" means the ratio of indemnity to premium.

i. "Person" means an individual, partnership, association, corporation, estate, trust, or other legal entity, and wherever applicable, a State, a political subdivision of a State, or any agency thereof.

j. "Service office" means the office servicing your contract as shown on the application for insurance or such other approved office as may be selected by you or designated by us.

k. "Tenant" means a person who rents land from another person for a share of the flax or a share of the proceeds therefrom.

l. "Unit" means all insurable acreage of flax in the county on the date of planting for the crop year:

(1) in which you have a 100 percent share; or

(2) which is owned by one entity and operated by another entity on a share basis.

Land rented for cash, a fixed commodity payment, or any consideration other than a share in the flax on such land will be considered as owned by the lessee. Land which would otherwise be one unit may be divided according to applicable guidelines on file in your service office. Units will be determined when the acreage is reported. Errors in reporting units may be corrected by us to conform to applicable guidelines when adjusting a loss. We may consider any acreage and share thereof reported by or for your spouse or child or any member of your household to be your bona fide share or the bona fide share of any other person having an interest therein.

18. Descriptive Headings.

The descriptive headings of the various policy terms and conditions are formulated for convenience only and are not intended to affect the construction or meaning of any of the provisions of the contract.

19. Determinations.

All determinations required by the policy will be made by us. If you disagree with our determinations, you may obtain reconsideration of or appeal those determinations in accordance with Appeal Regulations.

20. Notices.

All notices required to be given by you must be in writing and received by your service office within the designated time unless otherwise provided by the notice requirement. Notices required to be given immediately may be by telephone or in person and confirmed in writing. Time of the notice will be determined by the time of our receipt of the written notice.

Done in Washington, D.C., on October 10, 1985.

Edward Hews,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 85-28689 Filed 12-2-85; 8:45 am]

BILLING CODE 3410-08-M

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7 CFR Part 428

[Docket No. 2568S]

Sunflower Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby revises and reissues the Sunflower Crop Insurance Regulations (7 CFR Part 428), effective for the 1986 and succeeding crop years. The intended effect of this rule is to: (1) Change to a mandatory "Actual Production History" (APH) basis by removing the Premium Adjustment Table and providing for cancellation for not furnishing records; (2) add as a cause of loss the unavoidable failure of irrigation water supply; (3) change the method of computing indemnities when acreage, share, or practice is underreported; (4) change the method of crediting the replanting payment; (5) define the insured's responsibility for reporting production records necessary for determining the insurance guarantee; (6) adds a definition for the term "ASCS"; and (7) redefine "County" to clarify when land located outside the county is included in the county. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act as amended.

EFFECTIVE DATE: December 31, 1985.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation No. 1512-1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations in August 1, 1990.

Merritt W. Sprague, Manager, FCIC, has determined and certifies that this action (1) is not a major rule as defined by Executive Order No. 12291 because it will not result in : (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Fexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order No. 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Other than minor changes in language and format, the principal changes in the sunflower policy are:

1. Section 1.a.—Add the failure of irrigation water supply because of unavoidable cause as an insurable cause of loss. This clarifies intent since it is implied as a cause of loss in section 2.e.(2).

2. Section 5.a.—Remove the Premium Adjustment Table. The crop will be insured on an actual production history (APH) basis. Coverages will, therefore, reflect the actual production history of the crop on the unit. Insureds with good loss experience who are now receiving a premium discount are protected since they may retain a discount under the present schedule through the 1990 crop year or until their loss experience causes them to loss the advantage, whichever is earlier.

Remove the provisions for the transfers of insurance experience and for premium computation when insurance has not been continuous. Deletion of the Premium Adjustment Table eliminates the need for these provisions.

3. Section 6.—Specify that the replanting payment will only be applied to payment of the premium if the billing date has passed. In cases when the billing date for a crop has passed on the date the replanting payment is made, the replanting payment will be applied to payment of the billed premium. This is a change from the previous practice of applying the replanting payment to the outstanding premiums in all cases.

4. Section 9.d.—Allow the guarantee only on the acreage, share, or practice reported but credit production on the acreage, share, or practice actually planted if the acreage, share or practice reported results in a premium less than the acreage, share or practice actually planted. When acres are underreported, the production from all acres will be applied against the reported acres in calculating indemnities. This change will reduce the indemnities when acres are underreported and will reduce the complexity of calculations.

5. Section 9.—Delete the requirement that any replanting payment be considered an indemnity. This change allows an insured to collect a replanting payment in addition to an indemnity equal to the total liability for the unit in the event of a total loss. Previously, the total of any replanting payment and

indemnity could not exceed the FCIC liability on the unit in the event of partial loss.

6. Section 15.c.—Add a clause to cancel the contract if production history is not furnished by a certain date. An exception will be allowed if the insured can show, prior to the cancellation date, that records are unavailable due to conditions beyond the insured's control. This clause is required by the change to mandatory APH.

7 Section 17.—Add definitions for "ASCS" and "Loss ratio" for clarity. Amend the "County" definition to clarify when land located outside the county is to be included in the county.

On Friday, December 14, 1984, FCIC published a Notice of Proposed Rulemaking in the **Federal Register** at 49 FR 48729, to revise and reissue the Sunflower Crop Insurance Regulations (7 CFR Part 428), effective for the 1985 and succeeding crop years. The public was given 30 days in which to submit written comments on the proposed rule, but none were received.

On Wednesday, June 26, 1985, FCIC published a Supplemental Notice and Extension of Comment Period in the **Federal Register** at 50 FR 26367, making additional changes in the proposed rule prescribing procedures for insuring sunflowers on an actual production history (APH) basis; defining the insured's responsibility for reporting production records necessary for determining the insurance guarantee, and further proposing that the changes contained in both notices become effective for the 1986 and succeeding crop years.

The public was given an additional 30 days in which to submit written comments on the supplemental notice, but none were received. Therefore, except for minor changes in language and format, the proposed rule published at 49 FR 48729, as amended by the notice published at 50 FR 26367, is hereby adopted as a final rule, effective for the 1986 and succeeding crop years.

List of Subjects in 7 CFR Part 428

Crop insurance, Sunflower.

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby revises and reissues the Sunflower Crop Insurance Regulations (7 CFR Part 428), effective for the 1986 and succeeding crop years, to read as follows:

PART 428—SUNFLOWER CROP INSURANCE REGULATIONS

Subpart—Regulations for the 1986 and Succeeding Crop Years

Sec.
428.1 Availability of sunflower crop insurance.
428.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.
428.3 OMB control numbers.
428.4 Creditors.
428.5 Good faith reliance on misrepresentation.
428.6 The contract.
428.7 The application and policy.

Authority: Secs. 506, 516, Pub. L. 75-430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

Subpart—Regulations for the 1986 And Succeeding Crop Years

§ 428.1 Availability of sunflower crop insurance.

Insurance shall be offered under the provisions of this subpart on sunflowers in counties within the limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act, as amended. The counties shall be designated by the Manager of the Corporation from those approved by the Board of Directors of the Corporation.

§ 428.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.

(a) The Manager shall establish premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed for sunflowers which will be included in the actuarial table on file in the applicable service offices for the county and which may be changed from year to year.

(b) At the time the application for insurance is made, the applicant will elect a coverage level and price at which indemnities will be computed from among those levels and prices contained in the actuarial table for the crop year.

§ 428.3 OMB control numbers.

OMB control numbers are contained in Subpart H to Part 400, Title 7 CFR.

§ 428.4 Creditors.

An interest of a person in an insured crop existing by virtue of a lien, mortgage, garnishment, levy, execution, bankruptcy, involuntary transfer or other similar interest shall not entitle the holder of the interest to any benefit under the contract.

§ 428.5 Good faith reliance on misrepresentation.

Notwithstanding any other provision of the sunflower insurance contract, whenever: (a) An insured under a contract of crop insurance entered into under these regulations, as a result of a misrepresentation or other erroneous action or advice by an agent or employee of the Corporation: (1) Is indebted to the Corporation for additional premiums; or (2) has suffered a loss to a crop which is not insured or for which the insured is not entitled to an indemnity because of failure to comply with the terms of the insurance contract, but which the insured believed to be insured, or believed the terms of the insurance contract to have been complied with or waived; and (b) the Board of Directors of the Corporation, or the Manager in cases involving not more than $100,000.00, finds that: (1) An agent or employee of the Corporation did not in fact make such misrepresentation or take other erroneous action or give erroneous advice; (2) said insured relied thereon in good faith; and (3) to require the payment of the additional premiums or to deny such insured's entitlement to the indemnity would not be fair and equitable, such insured shall be granted relief the same as if otherwise entitled thereto. Application for relief under this section must be submitted to the Corporation in writing.

§ 428.6 The contract.

The insurance contract shall become effective upon the acceptance by the Corporation of a duly executed application for insurance on a form prescribed by the Corporation. The contract shall cover the sunflower crop as provided in the policy. The contract shall consist of the application, the policy, and the county actuarial table. Any changes made in the contract shall not affect its continuity from year to year. The forms referred to in the contract are available at the applicable service offices.

§ 428.7 The application and policy.

(a) Application for insurance on a form prescribed by the Corporation may be made by any person to cover such person's share in the sunflower crop as landlord, owner-operator, or tenant. The application shall be submitted to the Corporation at the service office on or before the applicable closing date on file in the service office.

(b) The Corporation may discontinue the acceptance of application in any county upon its determination that the insurance risk is excessive, and also, for the same reason, may reject any individual application. The Manager of the Corporation is authorized in any crop year to extend the closing date for submitting applications in any county, by placing the extended date on file in

the applicable service offices and publishing a notice in the **Federal Register** upon the Manager's determination that no adverse selectivity will result during the extended period. However, if adverse conditions should develop during such period, the Corporation will immediately discontinue the acceptance of applications.

(c) In accordance with the provisions governing changes in the contract contained in policies issued under FCIC regulations for the 1986 and succeeding crop years, a contract in the form provided for in this subpart will come into effect as a continuation of a sunflower contract issued under such prior regulations, without the filing of a new application.

(d) The application for the 1986 and succeeding crop year is found at Subpart D of Part 400—General Administrative Regulations (7 CFR 400.37, 400.38) and may be amended from time to time for subsequent crop years. The provisions of the Sunflower Crop Insurance Policy for the 1986 and succeeding crop years are as follows:

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Sunflower—Crop Insurance Policy

(This is a continous contract. Refer to Section 15.)

AGREEMENT TO INSURE: We will provide the insurance described in this policy in return for the premfum and your compliance with all applicable provisions.

Throughout this policy, "you" and "your" refer to the insured shown on the accepted Application and "we," "us," and "our" refer to the Federal Crop Insurance Corporation.

Terms and Conditions

1. Causes of loss.

a. The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

(1) Adverse weather conditions;

(2) Fire;

(3) Insects;

(4) Plant disease;

(5) Wildlife;

(6) Earthquake;

(7) Volcanic eruption; or

(8) If applicable, failure of the irrigation water supply due to an unavoidable cause occurring after the beginning of planting; unless those causes are excepted, excluded, or limited by the actuarial table or secion 9e(7).

b. We will not insure against any loss of production due to:

(1) The neglect, mismanagement, or wrongdoing of you, any member of your household, your tenants, or employees;

(2) The failure to follow recognized good sunflower farming practices;

(3) The failure or breakdown or irrigation equipment or facilities;

(4) The failure to follow recognized good sunflower irrigation practices;

(5) The impoundment of water by any governmental, public, or private dam or reservoir project; or

(6) Any cause not specified in section 1a as an insured loss.

2. Crop, acreage, and share insured.

a. The crop insured will be sunflower seed ("sunflowers") which are planted for harvest as sunflowers, grown on insured acreage, and for which a guarantee and premium rate are provided by the actuarial table.

b. The acreage insured for each crop year will be sunflowers planted on insurable acreage as designated by the actuarial table and in which you have a share, as reported by you or as determined by us, whichever we elect.

c. The insured share is your share as landlord, owner-operator, or tenant in the insured sunflowers at the time of planting.

d. We do not insure any acreage:

(1) If the farming practices carried out are not in accordance with the farming practices for which the premium rates have been established;

(2) Which is irrigated and an irrigated practice is not provided for by the actuarial table unless you elect to insure the acreage as nonirrigated by reporting it as insurable under section 3;

(3) Which is destroyed, it is practical to replant to sunflowers, and such acreage is not replanted;

(4) Initially planted after the final planting date contained in the actuarial table unless you agree, in writing, on our form to coverage reduction;

(5) Of volunteer sunflowers;

(6) Planted to a type or variety of sunflowers not established as adapted to the area or excluded by the actuarial table;

(7) Planted with another crop; or

(8) Which does not meet the rotation requirements designated by the actuarial table.

e. If insurance is provided for an irrigated practice you must report as irrigated only the acreage for which you have adequate facilities and water, to the time of planting, to carry out a good sunflower irrigation practice.

f. Unless otherwise provided by the actuarial table, insurance will attach only on acreage initially planted in rows far enough apart to permit cultivation; but, if such insured acreage is destroyed and replanted, by broadcasting, drilling, or in rows too close to permit cultivation, it will be considered insured acreage.

g. Acreage which is planted for the development or production of hybrid seed or for experimental purposes is not insured unless we agree, in writing, to insure such acreage.

h. We may limit the insured acreage to any acreage limitation established under any Act of Congress, if we advise you of the limit prior to planting.

3. Report of acreage, share, and practice.

You must report on our form:

a. All the acreage of sunflowers in the county in which you have a share;

b. The practice; and

c. Your share at the time of planting.

You must designate separately any acreage that is not insurable. You must report if you do not have a share in any sunflowers planted in the county. This report must be submitted annually on or before the reporting date established by the actuarial table. All indemnities may be determined on the basis of information you submit on this report. If you do not submit this report by the reporting date, we may elect to determine, by unit, the insured acreage, share, and practice or we may deny liabijity on any unit. Any report submitted by you may be revised only upon our approval.

4. Production guarantees, coverage levels, and prices for computing indemnities.

a. The production guarantees, coverage levels, and prices for computing indemnities are contained in the actuarial table.

b. Coverage level 2 will apply if you do not elect a coverage level.

c. You may change the coverage level and price election on or before the sales closing date as established by the actuarial table for submitting applications for the crop year.

5. Annual premium.

a. The annual premium is earned and payable at the time of planting. The amount is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share at the time of planting.

b. Interest will accrue at the rate of one and one-half percent (1½%) simple interest per calendar month, or any part thereof, on any unpaid premium balance starting on the first day of the month following the first premium billing date.

c. If you are eligible for a premium reduction in excess of 5 percent based on your insuring experience through the 1984 crop year under the terms of the experience table contained in the sunflower policy in effect for the 1985 crop year, you will continue to receive the benefit of that reduction subject to the following conditions:

(1) No premium reduction will be retained after the 1990 crop year;

(2) The premium reduction will not increase because of favorable experience;

(3) The premium reduction will decrease because of unfavorable experience in accordance with the terms of the policy in effect for the 1985 crop year;

(4) Once the loss ratio exceeds .80, no further premium reduction will apply; and

(5) Participation must be continuous.

6. Deductions for debt.

Any unpaid amount due us may be deducted from any indemnity payable to you or from a replanting payment if the billing date has passed on the date you are paid the replanting payment, or from any loan or payment due you under any Act of Congress or program administered by the United States Department of Agriculture or its Agencies.

7. Insurance period.

Insurance attaches when the sunflowers are planted and ends at the earliest of:

a. Total destruction of the sunflowers;

b. Combining, threshing, or removal from the field;

c. Final adjustment of a loss; or

d. November 30 of the calendar year in which sunflowers are normally harvested.

8. Notice of damage or loss.

a. In case of damage or probable loss:

(1) You must give us written notice if:

(a) You want our consent to replant sunflowers damaged due to any insured cause (see section 9f);

(b) During the period before harvest, the sunflowers on any unit are damaged and you decide not to further care for or harvest any part of them;

(c) You want our consent to put the acreage to another use; or

(d) After consent to put acreage to another use is given, additional damage occurs.

Insured acreage may not be put to another use until we have appraised the sunflowers and given written consent. We will not consent to another use until it is too late to replant. You must notify us when such acreage is replanted or put to another use.

(2) You must give us notice of probable loss at least 15 days before the beginning of harvest if you anticipate a loss on any unit.

(3) If probable loss is later determined, immediate notice must be given and a representative sample of the unharvested sunflowers (at least 10 feet wide and the entire length of the field) must remain unharvested for a period of 15 days from the date of notice, unless we give you written consent to harvest the sample.

(4) In addition to the notices required by this section, if you are going to claim an indemnity on any unit, you must give us notice not later than 30 days after the earliest of:

(a) Total destruction of the sunflowers on the unit;

(b) Harvest of the unit; or

(c) The calendar date for the end of the insurance period.

b. You may not destroy or replant any of the sunflowers on which a replanting payment will be claimed until we give written consent.

c. You must obtain written consent from us before you destroy any of the sunflowers which are not to be harvested.

d. We may reject any claim for indemnity if you fail to comply with any of the requirements of this section or section 9.

9. Claim for indemnity.

a. Any claim for indemnity on a unit must be submitted to us on our form not later than 60 days after the earliest of:

(1) Total destruction of the sunflowers on the unit;

(2) Harvest of the unit; or

(3) The calendar date for the end of the insurance period.

b. We will not pay any indemnity unless you:

(1) Establish the total production of sunflowers on the unit and that any loss of production has been directly caused by one or more of the insured causes during the insurance period; and

(2) Furnish all information we require concerning the loss.

c. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting therefrom the total production of sunflowers to be counted (see section 9e);

(3) Multiplying the remainder by the price election; and

(4) Multiplying this result by your share.

d. If the information reported by you under section 3 of the policy results in a lower premium than the actual premium determined to be due, the production guarantee on the unit will be computed on the information reported, but all production from insurable acreage, whether or not reported as insurable, will count against the production guarantee.

e. The total production (in pounds) to be counted for a unit will inlcude all harvested and appraised production.

(1) Mature sunflower production which otherwise is not eligible for quality adjustment will be reduced .12 percent for each .1 percentage point of moisture in excess of 10 percent; or

(2) Mature sunflower production which, due to insurable causes, has a test weight below 25 pounds per bushel for oil type sunflowers or below 22 pounds per bushel for non-oil type sunflowers will be adjusted by:

(a) Dividing the value per pound by the price per pound of No. 2 sunflowers; and

(b) Multiplying the result by the number of pounds of insured sunflowers.

The applicable price for No. 2 sunflowers will be the local market price on the earlier of the day the loss is adjusted or the day the sunflowers are sold.

(3) Any harvested production from other crops growing in the sunflowers will be counted as sunflowers on a weight basis.

(4) Appraised production to be counted will include:

(a) Unharvested production on harvested acreage and potential production lost due to uninsured causes and failure to follow recognized good sunflower farming practices;

(b) Not less than the guarantee for any acreage which is abandoned or put to another use without our prior written consent or damaged solely by an uninsured cause; and

(c) Any unharvested production.

(5) Any appraisal we have made on insured acreage and given written consent for that acreage to be put to another use will be considered production unless such acreage is:

(a) Not put to another use before harvest of sunflowers become general in the country and reappraised by us;

(b) Further damaged by an insured cause and reappraised by us; or

(c) Harvested.

(6) The amount of production of any unharvested sunflowers may be determined on the basis of field appraisals conducted after the end of the insurance period.

(7) If you elect to exclude hail and fire as insured causes of loss and the sunflowers are damaged by hail or fire, appraisals will be made in accordance with Form FCI–78, "Request to Exclude Hail and Fire."

f. A replanting payment may be made on any insured sunflowers replanted after we have given consent and the acreage replanted is at least the lesser of 10 acres or 10 percent of the insured acreage for the unit as determined on the final planting date.

(1) No replanting payment will be made on acreage:

(a) On which our appraisal exceeds 90 percent of the guarantee;

(b) Initially planted prior to the date established by the actuarial table; or

(c) On which a replanting payment has been made during the current crop year.

(2) The replanting payment per acre will be your actual cost per acre for replanting, but will not exceed the product obtained by multiplying 175 pounds times the price election, times your share.

If the information reported by you results in a lower premium than the actual premium determined to be due, the replanting payment will be reduced proportionately.

g. You must not abandon any acreage to us.

h. You may not sue us unless you have complied with all policy provisions. If a claim is denied, you may sue us in the United States District Court under the provisions of 7 U.S.C. 1508(c). You must bring suit within 12 months of the date notice of denial is received by you.

i. We have a policy for paying your indemnity within 30 days of our approval of your claim, or entry of a final judgment against us. We will, in no instance, be liable for the payment of damages, attorney's fees, or other charges in connection with any claim for indemnity, whether we approve or disapprove such claim. We will, however, pay simple interest computed on the net indemnity ultimately found to be due by us by a final judgment from an including the 61st day after the date you sign, date, and submit to us the properly completed claim for indemnity form, if the reason for our failure to timely pay is not due to your failure to provide information or other material necessary for the computation or payment of the indemnity. The interest rate will be that established by the Secretary of the Treasury under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611), and published in the **Federal Register** semiannually on or about January 1 and July 1. The interest rate to be paid on any indemnity will vary with the rate announced by the Secretary of the Treasury.

j. If you die, disappear, or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved after the sunflowers are planted for any crop year, any indemnity will be paid to the persons determined to be beneficially entitled thereto.

k. If you have other fire insurance, fire damage occurs during the insurance period, and you have not elected to exclude fire insurance from this policy, we will be liable for loss due to fire only for the smaller of the amount:

(1) Of indemnity determined pursuant to this contract without regard to any other insurance; or

(2) By which the loss from fire exceeds the indemnity paid or payable under such other insurance.

For the purpose of this section, the amount of loss from fire will be the difference between the fair market value of the production on the unit before the fire and after the fire.

10. Concealment of fraud.

We may void the contract on all crops insured without affecting your liability for premiums or waiving any right, including the right to collect any amount due us if, at any time, you have concealed or misrepresented any material fact or committed any fraud

relating to the contract. Such voidance will be effective as of the beginning of the crop year with respect to which such act or omission occurred.

11. Transfer of right to indemnity on insured share.

If you transfer any part of your share during the crop year, you may transfer your right to an indemnity. The transfer must be on our form and approved by us. We may collect the premium from either you or your transferee or both. The transferee will have all rights and responsibilities under the contract.

12. Assignment of indemnity.

You may assign to another party your right to an indemnity for the crop year, only on our form and with our approval. The assignee will have the right to submit the loss notices and forms required by the contract.

13. Subrogation. (Recovery of loss from a third party.)

Because you may be able to recover all or a part of your loss from someone other than us, you must do all you can to preserve any such right. If we pay you for your loss, then your right of recovery will at our option belong to us. If we recover more than we paid you plus our expenses, the excess will be paid to you.

14. Records and access to farm.

You must keep, for 2 years after the time of loss, records of the harvesting, storage, shipment, sale, or other disposition of all sunflowers produced on each unit, including separate records showing the same information for production from any uninsured acreage. Failure to keep and maintain such records may, at our option, result in cancellation of the contract prior to the crop year to which the records apply, assignment of production to units by us, or a determination that no indemnity is due. Any person designated by us will have access to such records and the farm for purposes related to the contract.

15. Life of contract: Cancellation and termination.

a. This contract will be in effect for the crop year specified on the application and may not be canceled by you for such crop year. Thereafter, the contract will continue in force for each succeeding crop year unless canceled or terminated as provided in this section.

b. This contract may be canceled by either you or us for any succeeding crop year by giving written notice on or before the cancellation date preceding such crop year.

c. Ninety days prior to the cancellation date for any crop year you must:

(1) Furnish to the Corporation, satisfactory production records for the previous crop year or the contract will be cancelled for the subsequent crop year; or

(2) Show to our satisfaction that the records are not available because of conditions beyond your control, such as fire, flood or other natural disaster. (If this subjection (2) applies, the Field Actuarial Office may assign a yield for the year for which the records are unavailable.)

You may furnish the records required by this section for any crop year at least 90 days prior to the crop year's cancellation date. Your election of this option will result in the inclusion of that crop year's production information in the next crop year's yield guarantee.

d. This contract will terminate as to any crop year if any amount due us on this or any other contract with you is not paid on or before the termination date preceding such crop year for the contract on which the amount is due. The date of payment of the amount due if deducted from:

(1) An indemnity will be the date you sign the claim; or

(2) Payment under another program administered by the United States Department of Agriculture will be the date both such other payment and setoff are approved.

e. The cancellation and termination dates are April 15.

f. If you die or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved, the contract will terminate as of the date of death, judicial declaration, or dissolution. If such event occurs after insurance attaches for any crop year, the contract will continue in force through the crop year and terminate at the end thereof. Death of a partner in a partnership will dissolve the partnership unless the partnership agreement provides otherwise. If two or more persons having a joint interest are insured jointly, death of one of the persons will disolve the joint entity.

g. The contract will terminate if no premium is earned for 5 consecutive years.

16. Contract changes.

We may change any terms and provisions of the contract from year to year. If your price election at which indemnities are computed is no longer offered, the actuarial table will provide the price election which you are deemed to have elected. All contract changes will be available at your service office by December 31 preceding the cancellation date. Acceptance of any change will be conclusively presumed in the absence of notice from you to cancel the contract.

17. Meaning of terms.

For the purposes of sunflower crop insurance:

a. "Actuarial table" means the forms and related material for the crop year approved by us which are available for public inspection in your service office, and which show the production guarantees, coverage levels, premium rates, prices for computing indemnities, practices, insurable and uninsurable acreage, and related information regarding sunflower insurance in the county.

b. "ASCS" means the Agricultural Stabilization and Conservation Service of the United States Department of Agriculture.

c. "County" means:

(1) The county shown on the application;

(2) Any additional land located in a local producing area bordering on the county, as shown by the actuarial table; and

(3) Any land identified by an ASCS farm serial number for the county but physically located in another county.

d. "Crop year" means the period within which the sunflowers are normally grown and will be designated by the calendar year in which the sunflowers are normally harvested.

e. "Harvest" means the completion of combining or threshing of sunflowers on the unit.

f. "Insurable acreage" means the land classified as insurable by us and shown as such by the actuarial table.

g. "Insured" means the person who submitted the application accepted by us.

h. "Loss ratio" means the ratio of indemnity to premium.

i. "Persons" means an individual, partnership, association, corporation, estate, trust, or other legal entity, and wherever applicable, a State, a political subdivision of a State, or any agency thereof.

j. "Replanting" means performing the cultural practices necessary to replant insured acreage to sunflowers.

k. "Service office" means the office servicing your contract as shown on the application for insurance or such other approved office as may be selected by you or designated by us.

l. "Tenant" means a person who rents land from another person for a share of the sunflowers or a share of the proceeds therefrom.

m. "Unit" means all insurable acreage of sunflowers in the county on the date of planting for the crop year:

(1) In which you have a 100 percent share; or

(2) Which is owned by one entity and operated by another entity on a share basis.

Land rented for cash, a fixed commodity payment, or any consideration other than a share in the sunflowers on such land will be considered as owned by the lessee. Land which would otherwise be one unit may be divided according to applicable guidelines on file in your service office. Units will be determined when the acreage is reported. Errors in reporting units may be corrected by us to conform to applicable guidelines when adjusting a loss. We may consider any acreage and share thereof reported by or for your spouse or child or any member of your household to be your bona fide share or the bona fide share of any other person having an interest therein.

18. Descriptive headings.

The descriptive headings of the various policy terms and conditions are fomulated for convenience only and are not intended to affect the construction or meaning of any of the provisions of the contract.

19. Determinations.

All determinations required by the policy will be made by us. If you disagree with our determinations, you may obtain reconsideration of or appeal those determinations in accordance with Appeal Regulations.

20. Notices.

All notices required to be given by you must be in writing and received by your service office within the designated time unless otherwise provided by the notice requirement. Notices required to be given immediately may be by telephone or in person and confirmed in writing. Time of the notice will be determined by the time of our receipt of the written notice.

Done in Washington, DC., on July 26, 1985.

Edward Hews,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 85-28691 Filed 12-2-85; 8:45 am]

BILLING CODE 3410-08-M

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7 CFR Part 433

[Amendment No. 1; Doc. No. 2823S]

Dry Bean Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby amends the Dry Bean Crop Insurance Regulations (7 CFR Part 433), effective for the 1986 and succeeding crop years. The intended effect of this rule is to: (1) Provide for cancellation for not furnishing records; (2) change the method of calculating the insured's share of an indemnity on crops transferred before harvest; (3) clarify provisions regarding failure to replant bean acreage; (4) increase the amount of acreage which must be replanted to obtain replanting payments; (5) shorten the length of time an insured has to give notice when claiming an indemnity; (6) allow a quality adjustment for appraisal purposes when crop is mature but not harvested; (7) add a definition for the term "ASCS"; and (8) redefine "County" to specify when land located outside the county will be included in the county. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

EFFECTIVE DATE: December 31, 1985.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation No. 1512-1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is June 1, 1990.

Merritt W. Sprague, Manager, FCIC, has determined and certifies that this action (1) is not a major rule as defined by Executive Order No. 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

The principal changes in the dry bean policy are:

1. Section 2.d.—Add a clause to clarify the method of calculating the insured's share of an indemnity on crops transferred before harvest. This change prevents the practice of collecting an indemnity on a crop in which the insured no longer has an interest.

2. Section 2.e.—Specify the varietal groups of beans to assure equal treatment of producers.

3. Section 9.g.—Increase from 10 acres or 10 percent to 20 acres or 20 percent the acreage replanted to qualify for a replant payment and apply a specific time frame for determining the replant for the unit. This change will reduce the number of inspections by reducing the insignificantly small replant payments and paper work.

4. Section 8.a.—Shorten from 30 to 10 days the time an insured has to give notice of loss when claiming an indemnity. This change allows FCIC to determine indemnities more efficiently and more quickly.

5. Section 9.f.—Remove the requirement that the beans be threshed to allow quality adjustment for field appraisals when the crop is mature but not harvested. Change "threshed" to "mature" to allow quality adjustment for field appraisals, when the crop is mature but not harvested.

6. Section 15.c.—Add a clause to cancel the contract if production history is not furnished by a certain date. An exception will be allowed if the insured can show prior to the cancellation date that records are not available due to conditions beyond the insured's control. This clause is required by the change to mandatory APH.

7. Section 17.—Add a definition for "ASCS". Amend the "County" definition to clarify when land located outside the county is included in the county.

On Monday, September 9, 1985, FCIC published a notice of proposed rulemaking in the **Federal Register** at 50 FR 36593, amending the Dry Bean Crop Insurance Regulations (7 CFR Part 433), effective for the 1986 and succeeding crop years. The public was given 30 days in which to submit written comments, data, and opinions on the proposed rule.

No comments were received in direct response to this proposed rule. However, on September 4-5, 1985, the Board of Directors, FCIC held informal meetings in Hearing Room B, Interstate Commerce Commission Building, Washington, DC, for the purpose of receiving comments from interested parties on the Actual Production History (APH) method of insurance and on the proposal to restrict unit division by removing unit division guidelines from policies. Those concepts were included in the proposed rule.

The APH concept of yield guarantees establishes a direct relationship between proven production capability of the individual insured producer, and the insurance guarantee or the premium rates. It requires the insured producer to submit annual records of insured production as a condition of continued insurability.

The determination to eliminate applicable unit division guidelines restricts unit division to include all the insurable crop grown within a county with no allowance for further division beyond those contained in the crop insurance policies.

Comments on the proposed regulations were received from six representatives of the private insurance industry, one member of Congress, fifteen insurance agents, four representatives of special interest groups, and five farmers.

The comments generally opposed: (1) The proposed requirement that insureds furnish annual records of insured production as a condition of continued insurability under the APH program for the establishment of yield guarantees; and (2) the proposed change to the insurance unit definition which would delete the guidelines filed at county service offices.

Those in opposition to the proposed regulations generally argued that they

would decrease the marketability of crop insurance by making the resulting insurance offer less attractive to potential purchasers. Many predicted a substantial level of cancellation by current contract holders if the proposed regulations became effective.

Arguments against the proposed requirement for records submission as a condition of continued insurance eligibility included: (1) Many farmers would not be willing to furnish records establishing annual production unless they have a loss and a potential indemnity; (2) an economic incentive like a reduced future yield guarantee is preferable to cancellation; and (3) the APH system as a whole is cumbersome, complex, and more difficult to administer than an area coverage plan.

Many commentators recommended that FCIC develop a plan to offer reduced insurance guarantees when a producer failed to voluntarily furnish records. Most comments supported the APH concept as a means of making an equitable insurance offer to the better producers of an area; however, many of the same group requested simplification of program procedures. Several comments recommended the establishment of a new method to reduce the impact of severe loss years upon yield guarantees for the future. A few comments recommended a return to an area coverage program as a means of retaining the participation of those whose recent production has not equaled former area coverage guarantees.

The comments received were fully considered in the course of arriving at the decision modifying the proposed rule.

The rationale for the initial adoption of the APH concept was to correct the problem of adverse selection inherent in the previous area coverage plans of insurance. Adverse selection occurs when the best insurance offer is made to the highest risk producer and the poorest insurance offer is made to the lowest risk producer. It is characterized by having insured clients with higher than average risk expectations without commensurate higher premium rates. Adverse selection results in higher than expected losses and ultimately in higher premium rates and thus, over the long term, severely limits participation levels.

Adverse selection is best addressed by establishing a direct relationship between proven production capability of individual procedures and their insurance guarantee and premium rates. The APH program accomplishes this objective.

Records of production are basic to a yield protection program of insurance. There is no logical alternative to requiring records if such a program is to succeed over an extended period of time. The APH concept, linking records to guarantees, is clearly preferable to any extension of the area coverage concept under any disguise. The latter can only lead to further aggravation of adverse selection. The ultimate result is the program serving only the lowest producing farmers on the highest risk land.

The premise that farmers will choose to cancel insurance participation in preference to furnishing annual records of production after the close of harvest or marketing season is rejected. The need to have such records of production for other business purposes, including for share rent settlement purposes, for financial statements in the event of the use of borrowed funds for operations, and for the submission of income tax returns, combined with the need of such records for farm management purposes, make such records readily available for most producers. The Dry Bean program is either an area coverage or an individual yield concept which, under the Individual Yield Coverage Plan (IYCP) program, requires submission of production records. This requirement has not had an adverse effect on the program. The records are available. No legitimate reason exists for failure to support a requested yield guarantee by furnishing production records.

If the sole reason for unwillingness to submit records of production lies in the fact that such submission will result in a lower than otherwise obtainable yield guarantee for the future, then the producer is seeking to be overinsured in relation to his proven capability. While past performance is not an absolute guarantee of future yield expectations, it is the best indicator which can be measured objectively.

The FCIC would be violating its public trust if it were not to use the best system possible to establish yield guarantees which fairly reflect yield expectations. Considering the administrative changes to procedure which are to be implemented, the objections to the APH program raised in the comments have been fully and fairly considered and are regarded as an insufficient basis for reversal of previous proposed regulations.

FCIC, in response to requests from the producers and the participating insurance industry, has taken administrative action to ease the burden of keeping the required records and to address problems in program administration. These actions were taken with regard to all crops which are under an APH principle of insurance.

For those crops with APH based yield guarantees, the action to provide more time for submission of records is a viable consideration.

The crop programs with APH based yield guarantees, including the provisions herein contained, are included in the provision allowing an extended time for the submission of records to ease the burden of keeping the required records because, since it is a new program, it would be in the best interests of the producer to obtain sufficient records of production in time to be used in the determination of the next succeeding crop insurance guarantee.

Arguments against the proposed unit division change included: (1) Separate insurance units for widely dispersed tracts of farmland, differing topography or soil types, and differing cultural or farm management practices are necessary to maintain or build participation levels; (2) spot causes of loss like hail and flood generally damage only a relatively small portion of the total planted acreage of most farms, thus the more units allowed, the greater the protection offered; (3) the proposed unit structure would result in discrimination or unfair treatment among producers; (4) the producer is entitled to an indemnity payment under the crop insurance program when he suffers a loss on a portion of his planted acreage even when overall yields are normal; and (5) expected reductions in participation would result in increased adverse selection. Many agreed that the current unit structure is less than satisfactory, but argued that FCIC should delay implementation of the proposed rule to provide time for further study and analysis of alternative approaches.

FCIC has determined to retain the present unit structure and institute further studies which are to be presented to the Board of Directors for consideration at the first meeting of the Board after February 1, 1986.

It is the objective of the FCIC to provide producers of agricultural commodities a program of insurance with an insurance unit structure which:

—Provides a disaster protection plan of insurance which meets the needs of producers at the lowest possible cost per acre.
—Minimizes the potential for fraud and abuse.
—Reduces the administrative costs of FCIC and writing companies.
—Minimizes the burden upon producers.
—Improves the actuarial soundness of the program.

—Simplifies and standardizes the unit definition for all programs.

The Board of Directors has discussed the unit definition issue on several occasions over the past three years.

The current standard insurance policy language defines "unit" as:

"Unit" means all insurable acreage of (name of crop) in the county on the date of planting for the crop year:

(1) In which you have a 100 percent share; or

(2) Which is owned by one entity and operated by another entity on a share basis.

Land rented for cash, a fixed commodity payment, or any consideration other than a share in the (name of crop) on such land shall be considered as owned by the lessee. Land which would otherwise be one unit may be divided according to applicable guidelines on file in your county service office.

As a matter of usual practice, units are often divided beyond that allowed by the policy unit definition to permit separate units by section or ASCS farm serial number. This is intended to be permitted only when verifiable records of production on such a basis exist.

The more insurance units allowed on a single contract, the higher the potential for fraud and abuse, the higher the costs of administration, and the larger the likelihood of legitimate loss.

The FCIC Board of Directors has been increasingly concerned about the high loss ratios (about 150%) experienced by the Corporation in the 1980–1984 period. It has refused to order a major premium rate increase because of its belief that normal weather and sound program design will prove the existing rates adequate over the long term. The Board has chosen a course of action to reduce adverse selection, lessen the potential for fraud and abuse, and improve the equitability of the insurance offer between options and areas of operation.

The Board believes that these actions are preferable to the alternative of major increases in premiums to producers.

The level of program participation by potential insureds is of great interest to the FCIC. The potential users of the program, the farmers of this nation, have a clear need for the protection offered. Higher levels of participation are desired because such expanded use of a crop insurance as a risk management tool can reduce the adverse economic impacts of crop failure on not only individual producers but the state and community in which they live. Crop insurance as a device to offer disaster assistance to farmers is much preferred to the alternative programs offered in the past in terms of equitability and cost to the public. Further, higher levels of participation tend to remove adverse selection which continues to be a problem of program administration.

There is an apparent need to modify the insurance unit determination practices of the past. Most of the comments received recommended delay and further study of the issues relating to insurance unit definition and that recommendation is accepted as being in the best interests of the program at this time.

The management of FCIC has been directed to present the results of further study to the Board of Directors at its first meeting after February 1, 1986. Interested parties are requested to offer input or comments to the Board. Any proposal presented during the requested timeframe should not only consider the impact upon program participation but also have a positive impact upon the actuarial soundness of the programs and the costs and burden of administration.

The most significant objection raised in the comment period was that significant adverse perception of the previously proposed change would lead to large numbers of cancellations by insured producers. The FCIC determination to permit the continued use of guidelines allowing further unit division will encourage continued growth in the program without undue risk of higher than normal cancellations.

These actions respond positively to the marketing-related concerns expressed regarding the previously proposed changes to the insurance regulations. They should have minimal adverse impact upon the attractiveness of the insurance offer and thus little negative impact upon participation rates.

Therefore, with the exception of minor changes in language and format, the proposed rule, amended as outlined above, is hereby adopted.

On March 14, 1985 at FR 50 10201, the regulations for the 1986 and subsequent crop year Dry Bean Crop Insurance were revised and rewritten effective December 1, 1985. It now been determined that the policy published in that revision be amended as set out herein. The effective date for this rule will be December 31, 1985.

List of Subjects in 7 CFR Part 433

Crop insurance, Dry beans.

PART 433—[AMENDED]

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby amends the Dry Bean Crop Insurance Regulations (7 CFR Part 433), effective for the 1986 and succeeding crop years, in the following instances:

1. The authority citation for 7 CFR Part 433 continues to read as follows:

Authority: Sections 506, 516, Pub. L. 75–430, 52 Stat. 73, 77 as amended (7 U.S.C. 1506, 1516).

2. 7 CFR 433.7(d) is amended by revising the Dry Bean Insurance Policy for the 1986 and Succeeding Crop Years, to read as follows:

§ 433.7 The application and policy.

* * * * *

(d) * * *

Department of Agriculture, Federal Crop Insurance Corporation

Dry Bean Crop Insurance Policy

(This is a continuous contract. Refer to Section 15.)

Agreement to insure: We will provide the insurance described in this policy in return for the premium and your compliance with all applicable provisions.

Throughout this policy, "you" and "your" refer to the insured shown on the accepted Application and "we," "us," and "our" refer to the Federal Crop Insurance Corporation.

Terms and Conditions

1. Causes of loss.

a. The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

(1) Adverse weather conditions;
(2) Fire;
(3) Insects;
(4) Plant disease;
(5) Wildlife;
(6) Earthquake;
(7) Volcanic eruption; or
(8) If applicable, failure of the irrigation water supply due to an unavoidable cause occurring after the beginning of planting;

unless those causes are excepted, excluded, or limited by the actuarial table or section 9f(5).

b. We will not insure against any loss of production due to:

(1) The neglect, mismanagement, or wrongdoing of you, any member of your household, your tenants, or employees;

(2) The failure to follow recognized good bean farming practices;

(3) The failure or breakdown of irrigation equipment or facilities;

(4) The failure to follow good bean irrigation practices;

(5) The impoundment of water by any governmental, public, or private dam or reservoir project; or

(6) Any cause not specified in section 1a as an insured loss.

2. Crop, Acreage, and Share Insured.

a. The crop insured will be dry beans ("beans") and will consist of:

(1) Dry edible beans, planted for harvest as dry beans, of a class designated in the actuarial table; and

(2) Bush varieties of garden seed beans (contract seed beans), planted for harvest as seed and grown under a contract executed with a seed company before the acreage reporting date;

which are grown on insured acreage and for which a guarantee and premium rate are provided by the actuarial table.

b. An instrument in the form of a "lease" under which you retain control of the acreage on which the insured beans are grown and which provides for delivery of the beans under certain conditions and at a stipulated price will, for the purpose of this contract, be treated as a contract under which you have the share in the beans.

c. The acreage insured for each crop year will be beans planted on insurable acreage as designated by the actuarial table and in which you have a share, as reported by you or as determined by us, whichever we elect.

d. The insured share is your share as landlord, owner-operator, or tenant in the insured beans at the time of planting. However, only for the purpose of determining the amount of indemnity, your share will not exceed your share on the earlier of:

(1) The time of loss; or

(2) The beginning of harvest.

e. We do not insure any acreage:

(1) Of bush varieties of garden seed beans not grown under contract or excluded from the contract for, or during, the crop year;

(2) If the farming practices carried out are not in accordance with the farming practices for which the premium rates have been established;

(3) Which is irrigated and an irrigated practice is not provided for by the actuarial table unless you elect to insure the acreage as nonirrigated by reporting it as insurable under section 3;

(4) Which is destroyed, it is practical to replant to the same varietal group of garden seed beans or the same varietal group of dry edible beans, and such acreage is not replanted;

(5) Initially planted after the final planting date contained in the actuarial table unless you agree, in writing, on our form to coverage reduction;

(6) Of volunteer beans;

(7) Planted to a class of dry edible beans or a bush variety of garden seed beans not established as adapted to the area or excluded by the actuarial table;

(8) Which does not meet the rotation requirements designated by the actuarial table; or

(9) Planted with a crop other than beans.

f. If insurance is provided for an irrigated practice you must report as irrigated only the acreage for which you have adequate facilities and water at the time of planting to carry out a good bean irrigation practice.

g. Unless otherwise provided by the actuarial table, insurance will attach only on acreage initially planted in rows far enough apart to permit cultivation, however, if insured acreage is destroyed and replanted by broadcasting, drilling, or in rows too close to permit cultivation, it will be regarded as insured acreage.

h. Any acreage of beans which is destroyed and replanted to an insurable class of dry edible beans or bush varieties of garden seed beans will be regarded as insured acreage.

i. Acreage which is planted for the development or production of hybrid seed or for experimental purposes is not insured unless we agree, in writing, to insure such acreage.

j. We may limit the insured acreage to any acreage limitation established under any Act of Congress if we advise you of the limit prior to planting.

3. Report of Acreage, Share, and Practice.

You must report on our form:

a. All the acreage of beans in the county in which you have a share;

b. The practice; and

c. Your share at the time of planting.

You must designate separately any acreage that is not insurable. You must report if you do not have a share in any beans planted in the county. This report must be submitted annually on or before the reporting date established by the actuarial table. All indemnities may be determined on the basis of information you submit on this report. If you do not submit this report by the reporting date, we may elect to determine, by unit, the insured acreage, share, and practice or we may deny liability on any unit. Any report submitted by you may be revised only upon our approval.

4. Production Guarantees, Coverage Levels, and Prices for Computing Indemnities.

a. The production guarantees, coverage levels, and prices for computing indemnities are contained in the actuarial table.

b. Coverage level 2 will apply if you do not elect a coverage level.

c. You may change the coverage level and price election on or before the sales closing date as established by the actuarial table for submitting applications for the crop year.

5. Annual Premium.

a. The annual premium is earned and payable at the time of planting. The amount is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share at the time of planting.

b. Interest will accrue at the rate of one and one-half percent (1½%) simple interest per calendar month, or any part thereof, on any unpaid premium balance starting on the first day of the month following the first premium billing date.

c. If you are eligible for a premium reduction in excess of 5 percent based on your insuring experience through the 1984 crop year under the terms of the experience table contained in the dry bean policy for the 1985 crop year, you will continue to receive the benefit of that reduction subject to the following conditions:

(1) No premium reduction will be retained after the 1989 crop year;

(2) The premium reduction will not increase because of favorable experience;

(3) The premium reduction will decrease because of unfavorable experience in accordance with the terms of the 1985 policy;

(4) Once the loss ratio exceeds .80, no further premium reduction will apply; and

(5) Participation must be continuous.

6. Deductions for Debt.

Any unpaid amount due us may be deducted from any indemnity payable to you, or from a replanting payment if the billing date has passed on the date you are paid the replanting payment, or from any loan or payment due you under any Act of Congress or program administered by the United States Department of Agriculture or its Agencies.

7. Insurance Period.

Insurance attaches when the beans are planted and ends at the earliest of:

a. Total destruction of the beans;

b. Combining, threshing, or removal from the field;

c. Final adjustment of a loss; or

d. November 15 of the calendar year in which the beans are normally harvested.

8. Notice of Damage or Loss.

a. In case of damage or probable loss:

(1) You must give us written notice if:

(a) You want our consent to replant beans damaged due to any insured cause (See Section 9.g.);

(b) During the period before harvest, the beans on any unit are damaged and you decide not to further care for or harvest any part of them;

(c) You want our consent to put the acreage to another use; or

(d) After consent to put acreage to another use is given, additional damage occurs.

Insured acreage may not be put to another use until we have appraised the beans and given written consent. We will not consent to another use until it is too late to replant. You must notify us when such acreage is replanted or put to another use.

(2) You must give us notice of probable loss at least 15 days before the beginning of harvest if you anticipate a loss on any unit.

(3) If probable loss is later determined, immediate notice must be given and a representative sample of the unharvested beans (at least 10 feet wide and the entire length of the field) must remain unharvested for a period of 15 days from the date of notice, unless we give you written consent to harvest the sample.

(4) In addition to the notices required by this section, if you are going to claim an indemnity on any unit, you must give us notice not later than 10 days after the earliest of:

(a) Total destruction of the beans on the unit;

(b) Harvest of the unit; or

(c) The calendar date for the end of the insurance period.

b. You may not destroy or replant any of the beans on which a replanting payment will be claimed until we give written consent.

c. You must obtain written consent from us before you destroy any of the beans which are not to be harvested.

d. We may reject any claim for indemnity if you fail to comply with any of the requirements of this section or section 9.

9. Claim for Indemnity.

a. Any claim for indemnity on a unit must be submitted to us on our form not later than 60 days after the earliest of:

(1) Total destruction of the beans on the unit;

(2) Harvest of the unit; or

(3) The calendar date for the end of the insurance period.

b. We will not pay any indemnity unless you:

(1) Establish the total production of beans on the unit and that any loss of production has been directly caused by one or more of the insured causes during the insurance period; and

(2) Furnish all information we require concerning the loss.

c. The indemnity will be determined on each unit of dry edible beans by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting therefrom the total production of dry edible beans to be counted (see section 9f);

(3) Multiplying the remainder by the price election; and

(4) Multiplying this result by your share.

d. The amount of indemnity on each unit of bush varieties of garden seed beans will be determined by subtracting the value of production from the dollar amount of insurance and multiplying the remainder by the insured share.

(1) The value of production is obtained by multiplying, by variety, the total production to be counted by the applicable price per pound at which indemnities will be computed and totaling such amounts. The applicable price per pound at which indemnities will be computed will be the lesser of the amount designated by:

(a) The actuarial table; or

(b) The contract with the seed company.

(2) The dollar amount of insurance is obtained by multiplying, by variety, the production guarantee per acre by the insured acreage, and the result by the price per pound at which indemnities will be computed and totaling such amounts. The price per pound at which indemnities will be computed will be the lesser of the amount designated by:

(a) The actuarial table; or

(b) The contract with the seed company.

e. If the information reported by you under section 3 of the policy results in a lower premium than the actual premium determined to be due, the production guarantee on the unit will be computed on the information reported, but all production from insurable acreage, whether or not reported as insurable, will count against the production guarantee.

f. The total production (in pounds) to be counted for a unit will include all harvested and appraised production.

(1) Mature dry edible bean production:

(a) Which otherwise is not eligible for quality adjustment will be reduced .12 percent for each .1 percentage point of moisture in excess of 18.0 percent;

(b) Of the classes of pea and medium white with a pick in excess of 4 percent due to insurable causes and of any other classes which, due to insurable causes, does not grade No. 2 or better, in accordance with the Official United States Grain Standards, will be adjusted by multiplying the number of pounds of such beans by the conversion factor designated by the actuarial table for the applicable grade or pick; or

(c) Which, due to insurable causes, does not meet any U.S. Grade or pick shown in the actuarial table, or would not meet these requirements if properly handled, or if a conversion factor is not designated by the actuarial table, any mature beans which do not grade No. 2 or better in accordance with the Office United States Grain Standards, will be adjusted by:

(i) Dividing the value per hundredweight of such beans by the price per hundredweight of U.S. No. 2 beans (except that for the classes of pea and medium while, the price will be the local market price per hundredweight for these classes with a 4 percent pick); and

(ii) Multiplying the result by the number of pounds of such beans.

The applicable price for No. 2 beans will be the local market price on the earlier of the day the loss is adjusted or the day such beans were sold.

(2) Appraised production to be counted will include:

(a) Unharvested production on harvested acreage and potential production lost due to uninsured causes and failure to follow recognized good bean farming practices;

(b) Not less than the guarantee for any acreage which is abandoned or put to another use without our prior written consent or damaged solely by an uninsured cause; and

(c) Any appraised production on unharvested acreage.

(3) Any appraisal we have made on insured acreage for which we have given written consent to be put to another use will be considered production unless such acreage is:

(a) Not put to another use before harvest of beans becomes general in the county and reappraised by us;

(b) Further damage by an insured cause and reappraised by us; or

(c) Harvested.

(4) The amount of production of any unharvested beans may be determined on the basis of field appraisals conducted after the end of the insurance period.

(5) If you elect to exclude hail and fire as insured causes of loss and the beans are damaged by hail or fire, appraisals will be made in accordance with Form FCI–78, "Request to Exclude Hail and Fire."

g. A replanting payment may be made on any insured beans replanted after we have given consent and the acreage replanted is at least the lesser of 20 acres or 20 percent of the insured acreage for the unit, as determined on the final planting date.

(1) No replanting payment will be made on acreage:

(a) On which our appraisal exceeds 90 percent of the guarantee;

(b) Initially planted prior to the date established by the actuarial table; or

(c) On which a replanting payment has been made during the current crop year.

(2) The replanting payment per acre will be your actual cost per acre for replanting but will not exceed the product obtained by multiplying 100 pounds times the price election, times your share.

If the information reported by you results in a lower premium than the actual premium determined to be due, the replanting payment will be reduced proportionately.

h. You must not abandon any acreage to us.

i. You may not sue us unless you have complied with all policy provisions. If a claim is denied, you may sue us in the United States District Court under the provisions of 7 U.S.C. 1508(c). You must bring suit within 12 months of the date notice of denial is received by you.

j. We have a policy for paying your indemnity within 30 days of our approval of your claim, or entry of a final judgment against us. We will, in no instance, be liable for the payment of damages, attorney's fees, or other charges in connection with any claim for indemnity, whether we approve or disapprove such claim. We will, however, pay simple interest computed on the net indemnity ultimately found to be due by us or by a final judgment from and including the 61st day after the date you sign, date, and submit to us the properly completed claim form, if the reason for our failure to timely pay is not due to your failure to provide information or other material necessary for the computation or payment of the indemnity. The interest rate will be that established by the Secretary of the Treasury under Section 12 of the Contract Dispute Act of 1978 (41 U.S.C. 611), and published in the **Federal Register** semiannually on or about January 1 and July 1. The interest rate to be paid on any indemnity will vary with the rate announced by the Secretary of the Treasury.

k. If you die, disappear, or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved after the beans are planted for any crop year, any indemnity will be paid to the persons determined to beneficially entitled thereto.

l. If you have other fire insurance, fire damage occurs during the insurance period, and you have not elected to exclude fire insurance from this policy, we will be liable for loss due to fire only for the smaller of the amount:

(1) Of indemnity determined pursuant to this contract without regard to any other insurance; or

(2) By which the loss from fire exceeds the indemnity paid or payable under such other insurance.

For the purpose of this section, the amount of loss from fire will be the difference between the fair market value of the production on the unit before the fire and after the fire.

10. Concealment or Fraud.

We may void the contract on all crops insured without affecting your liability for premiums or waiving any right, including the right to collect any amount due us if, at any time, you have concealed or misrepresented any material fact or committed any fraud relating to the contract. Such voidance will be effective as of the beginning of the crop year with respect to which such act or omission occurred.

11. Transfer of Right to Indemnity on Insured Share.

If you transfer any part of your share during the crop year, you may transfer your right to an indemnity. The transfer must be on our form and approved by us. We may collect the premium from either you or your transferee or both. The transferee will have all rights and responsibilities under the contract.

12. Assignment of Indemnity.

You may assign to another party your right to an indemnity for the crop year, only on our form and with approval. The assignee will

have the right to submit the loss notices and forms required by the contract.

13. Subrogation. (Recovery of loss from a third party.)

Because you may be able to recover all or a part of your loss from someone other than us, you must do all you can to preserve any such right. If we pay you for your loss, then your right of recovery will at our option belong to us. If we recover more than we paid you plus our expenses, the excess will be paid to you.

14 Records and Access to Farm.

You must keep, for two years after the time of loss, records of the harvesting, storage, shipment, sale, or other disposition of all beans produced on each unit, including separate records showing the same information for production from any uninsured acreage. Failure to keep and maintain such records may, at our option, result in cancellation of the contract prior to the crop year to which the records apply, assignment of production to units by us, or a determination that no indemnity is due. Any person designated by us will have access to such records and the farm for purposes related to the contract.

15. Life of Contract: Cancellation and Termination.

a. This contract will be in effect for the crop year specified on the application and may not be canceled by you for such crop year. Thereafter, the contract will continue in force for each succeeding crop year unless canceled or terminated as provided in this section.

b. This contract may be canceled by either you or us for any succeeding crop year by giving written notice on or before the cancellation date preceding such crop year.

c. Ninety days prior to the cancellation date for any crop year you must:

(1) Furnish to the Corporation, satisfactory production records for the previous crop year or the contract will be canceled for the subsequent crop year; or

(2) Show to our satisfaction that the records are not available because of conditions beyond your control, such as fire, flood or other natural disaster. (If this subsection (2) applies, the Field Actuarial Office may assign a yield for the year for which the records are unavailable.)

You may furnish the records required by this section for any crop year at least 90 days prior to the crop year's cancellation date. Your election of this option will result in the inclusion of that crop year's production information in the next crop year's yield guarantee.

d. This contract will terminate as to any crop year if any amount due us on this or any other contract with you is not paid on or before the termination date preceding such crop year for the contract on which the amount is due. The date of payment of the amount due if deducted from:

(1) An indemnity will be the date you sign the claim; or

(2) Payment under another program administered by the United States Department of Agriculture will be the date both such other payment and setoff are approved.

e. The cancellation and termination dates are:

State	Cancellation and termination dates
California	March 31.
All other states	April 15.

f. If you die or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved, the contract will terminate as of the date of death, judicial declaration, or dissolution. If such event occurs after insurance attaches for any crop year, the contract will continue in force through the crop year and terminate at the end thereof. Death of a partner in a partnership will dissolve the partnership unless the partnership agreement provides otherwise. If two or more persons having a joint interest are insured jointly, death of one of the persons will dissolve the joint entity.

g. The contract will terminate if no premium is earned for 5 consecutive years.

16. Contract changes.

We may change any terms and provisions of the contract from year to year. If your price election at which indemnities are computed is no longer offered, the actuarial table will provide the price election which you are deemed to have elected. All contract changes will be available at your service office by December 31 preceding the cancellation date. Acceptance of any change will be conclusively presumed in the absence of notice from you to cancel the contract.

17. Meaning of Terms.

For the purposes of dry bean crop insurance:

a. "Actuarial table" means the forms and related material for the crop year approved by us which are available for public inspection in your service office, and which show the production guarantees, coverage levels, premium rates, prices for computing indemnities, practices, insurable and uninsurable acreage, and related information regarding dry bean insurance in the county.

b. "ASCS" means the Agricultural Stabilization and Conservation Service of the United States Department of Agriculture.

c. "County" means: (1) The county shown on the application;

(2) Any additional land located in a local producing area bordering on the county, as shown by the actuarial table; and

(3) Any land identified by an ASCS farm serial number for the county but physically located in another county.

d. "Crop year" means the period within which the beans are normally grown and will be designated by the calendar year in which the beans are normally harvested.

e. "Harvest" means the completion of combining or threshing of beans on the unit.

f. "Insurable acreage" means the land classified as insurable by us and shown as such by the actuarial table.

g. "Insured" means the person who submitted the application accepted by us.

h. "Loss ratio" means the ratio of indemnity to premium.

i. "Person" means an individual, partnership, association, corporation, estate, trust, or other legal entity, and wherever applicable, a State, a political subdivision of a State, or any agency thereof.

j. "Pick" means the percentage, on a weight basis, of the defects such as splits, damaged (including discolored) beans, contrasting classes, and foreign material remaining in the beans after dockage has been removed by the proper use of screens or sieves.

k. "Replanting" means performing the cultural practices necessary to replant insured acreage to dry beans.

l. "Service office" means the office servicing your contract as shown on the application for insurance or such other approved office as may be selected by you or designated by us.

m. "Tenant" means a person who rents land from another person for a share of the beans or a share of the proceeds therefrom.

n. "Unit" means all insurable acreage of either dry edible beans or bush varieties of garden seed beans in the county on the date of planting for the crop year:

(1) In which you have a 100 percent share; or

(2) Which is owned by one entity and operated by another entity on a share basis.

Land rented for cash, a fixed commodity payment, or any consideration other than a share in the beans on such land will be considered as owned by the lessee. Land which would otherwise be one unit may be divided according to applicable guidelines on file in your service office. Units will be determined when the acreage is reported. Errors in reporting units may be corrected by us to conform to applicable guidelines when adjusting a loss. We may consider any acreage and share thereof reported by or for your spouse or child or any member of your household to be your bona fide share or the bona fide share of any other person having an interest therein.

18. Descriptive Headings.

The descriptive headings of the various policy terms and conditions are formulated for convenience only and are not intended to affect the construction or meaning of any provisions of the contract.

19. Determinations.

All determinations required by the policy will be made by us. If you disagree with our determinations, you may obtain reconsideration of or appeal those determinations in accordance with Appeal Regulations.

20. Notices.

All notices required to be given by you must be in writing and received by your service office within the designated time unless otherwise provided by the notice requirement. Notices required to be given immediately may be by telephone or in person and confirmed in writing. Time of the notice will be determined by the time of our receipt of the written notice.

Done in Washington, DC, on October 8, 1985.

Edward Hews,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 28690 Filed 12-2-85; 8:45 am]

BILLING CODE 3410-08-M

Foreign Agricultural Service

7 CFR Part 1540

Emergency Relief From Certain Perishable Products Imported From Israel

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule pertaining to emergency relief from increased, injurious imports of certain perishable products from Israel entering the United States at a reduced rate of duty or duty-free pursuant to a trade agreement between the United States and Israel. It corrects "Subpart B—Emergency Relief From certain Perishable Products Imported From Israel" with regard to the authority citation for Subpart B.

FOR FURTHER INFORMATION CONTACT: Lyle Sebranek (202) 382–1289.

Correction

In FR Doc. 85–25804 beginning on page 43691 in the issue of Tuesday, October 29, 1985, in the middle column of page 43692, item number 1 is corrected to read as follows:

1. The authority citation for Subpart B and a cross reference are added to read as follows:

Authority: Sec. 404, Pub. L. 98–573, 98 Stat. 3018, as amended (19 U.S.C. 2112 note); 5 U.S.C. 301.

Cross Reference: For U.S. International Trade Commission regulations concerning investigations of import injury and the rules pertaining to the filing of a Section 201 petition, see 19 CFR Part 206.

Issued at Washington, DC, this 21st day of November 1985.

Leo V. Mayer,

Acting Administrator, FAS.

[FR Doc. 85–28705 Filed 12–2–85; 8:45 am]

BILLING CODE 3410–10–M

FEDERAL RESERVE SYSTEM

12 CFR Part 227

[Reg. AA]

Unfair or Deceptive Acts or Practices; Issuance of Staff Guidelines on the Credit Practices Rule

Correction

In FR Doc. 85–26982 beginning on page 47036 in the issue of Thursday, November 14, 1985, make the following corrections:

1. On page 47036, third column, fifteenth line from the bottom, "Section 13(f)" should have read "Section 18(f)".

2. On page 47039, second column, under the heading for "Household Goods", third paragraph, "Q12(b)–2" should have read "Q12(d)–2".

3. On page 47040, second column, tenth line, "15 U.S.C." should have read "15 U.S.C. 1693".

4. On page 47042, second column, fifth paragraph, second line from the bottom, insert the word "not" between "would" and "be".

BILLING CODE 1505–01–M

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 564

[No. 85–1069]

Federal Savings and Loan Insurance Corporation; Settlement of Insurance; Reconsideration Procedures

Dated: November 22, 1985.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: The Federal Home Loan Bank Board ("Board"), as operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC" or "Corporation"), is amending its regulations concerning the settlement of insurance on accounts in insured institutions in default. The amendments are intended to clarify and increase the efficiency of the current procedures under which a holder of such an account may obtain agency reconsideration of a determination that all or a portion of such an account is uninsured.

EFFECTIVE DATE: November 29, 1985.

FOR FURTHER INFORMATION CONTACT: Sandra L. Richardson, Attorney, (202–377–6432), or Christina M. Gattuso, Attorney, (202–377–7240), Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: Pursuant to section 405(b) of the National Housing Act, the Corporation is authorized, in the event of a default by an institution the accounts of which are insured by the Corporation ("insured institution"), to make payment of insurance on accounts and to require the filing of proofs of claims prior to paying insurance. 12 U.S.C. 1728(b) (1982). Section 564.1 of the Insurance Regulations provides that, in the event of a default by an insured institution, the Corporation shall determine from the books and records of the institution or otherwise the insured members of the institution and the amount of each insured member's account(s), and shall give each insured member notice of the time and place of payment of insurance on accounts. 12 CFR 564.1(a) (1985). The Board, as operating head of the Corporation, has delegated on a case-by-case basis the authority to settle and pay insurance, in accordance with section 405 of the National Housing Act and its implementing regulations, to the Director, Deputy Director, an Associate Director, or the Director of the Insurance Division, Office of the FSLIC.

Section 405(b) of the National Housing Act neither precludes reconsideration by the agency of such insurance determinations nor provides a formal mechanism for such reconsideration. However, due to an increase in the number of inquiries by accountholders as to the availability of administrative review of insurance determinations, the Board adopted formal reconsideration procedures. *See* 12 CFR 564.1(d) (1985).

On April 17, 1985, the Board proposed a rule which would clarify and streamline the insurance reconsideration procedures, the initial determination procedures, and the interrelationship between these two steps in the insurance claims determinations process. *See* 50 FR 19030 (May 6, 1985). This action was taken as a result of the Board having become aware of administrative difficulties inherent in the reconsideration procedures and that considerable confusion existed on the part of accountholders with respect to the procedures. Specifically, accountholders had expressed confusion concerning the purpose, intent, and practical application of the reconsideration procedures and the effect of such procedures upon the procedures used by the Corporation in reaching insurance determinations. As a result of this confusion, the efficiency of the reconsideration procedures had significantly decreased.

The Board received three public comments in response to the proposed rule. Of these comments, two were from insured institutions and one was from a thrift industry trade association. All of the commenters expressed support for the proposed rule change.

A few minor modifications to the proposed rule, however, were suggested by the commenters, including modifications to the time limits for filing supplemental information set forth in the proposal. As discussed further below, the Board, after considering these comments, has decided to finally adopt the time limits applicable to

supplemental information in amended form.

One commenter also advocated including in the final rule a statement indicating that insured accounts which were not in excess of $100,000 and were not subject to dispute would be paid within 30 days (or within another specific time frame). Although the Board realizes the desirability of such a provision from an accountholders' perspective, pursuant to section 405(a) of the National Housing Act the Corporation is required to make payments on insured accounts "as soon as possible"—not within 30 or 60 days, 12 U.S.C. 1728(b) (1982). In this regard, the Board notes that, following the default of two institutions recently, 72% of the total dollar amount of claims outstanding in each insured institution were settled and paid within 2 weeks from the date of default. In these circumstances, the Board believes it is unnecessary and inappropriate to set a specific time limit in which claims must be paid.

Finally, one commenter suggested that the Corporation outline the procedures for reconsideration and distribute the procedures directly to accountholders upon notification that all or a portion of their accounts are uninsured. This commenter maintained that the Board's attempt to eliminate confusion among accountholders would be more effective if the procedures were communicated directly to accountholders. However, in view of the fact that the procedures for submitting requests for reconsideration will be set forth in the regulation, which is publicly available, and that accountholders will be informed of their right to file for reconsideration in the initial determination, with reference to the relevant regulation, the Board finds that any additional notice is unnecessary.

After reviewing the comments, which are discussed more fully below, and considering other available information, the Board has determined to adopt the regulation substantially as proposed, with modifications as described.

Description of Final Rule

1. General

The proposed amendments to § 564.1(d)(1) and (2) clarified that determinations on reconsideration of initial determinations, and not initial determinations, constitute final agency action on insurance claims. The proposal also provided that the failure of an accountholder to file a request for reconsideration of an initial determination constitutes an acceptance by the accountholder of the initial determination. The proposal further granted the Director of the Office of the FSLIC ("Director") the authority to delegate authority to make determinations on insurance of accounts to a designee. No comments were received which addressed these provisions of the proposed rule. The Board believes these changes will heighten efficiency by promoting better understanding by accountholders of the reconsideration procedures and streamlining the Board's administrative processing of appeals. The Board therefore is adopting these provisions as proposed.

2. Request for Reconsideration

The proposal would change the current requirement that a request for reconsideration must be filed within 60 days of *receipt* of an initial determination to within 60 days of the *issuance* of an initial determination (*i.e.*, the date indicated on the letter or memorandum constituting the initial determination). One commenter expressed concern that this change would decrease the amount of time that an accountholder has to contest an initial determination, and recommended retaining the current rule.

The Board believes that this change will significantly increase the efficiency of the appeals process by enabling the Corporation to determine more readily the expiration date for filing a request for reconsideration. The Board further finds that 60 days, inclusive of mailing time, provides ample time for the accountholder to file a reconsideration request. The Board has therefore adopted this provision as proposed.

The Board is also adopting without change proposed amendments which require the accountholder to provide specific information and documents in support of the request fo reconsideration. Under the proposed and final amendments, the accountholder must provide a statement of the facts on which the claim for insurance is based and a statement of objections to the initial determination and the alleged error in the determination. Additionally, the accountholder must provide copies of records and specifically identify the facts and matters relied upon in seeking a reconsideration. The Board believes that this provision will increase the efficient use of staff resources and result in more speedy resolution of claims.

The proposal also included a provision authorizing the Director to require, within a specified period of time, that the accountholder submit additional information in support of the request. This provision required the accountholder to provide the supplementary information within 30 days from the date of issuance of the written request for information. Two commenters argued that the 30-day period was too restrictive and recommended that the period for submission of information in response to the Director's request should be extended to 60 days. One commenter argued that the 30-day period was too short because requests for supplementary information may involve time-consuming record searches and consultations with divisions or affiliates of corporate accountholders. Additionally, both commenters noted that the mailing time involved (that is, mailing the written request to the accountholder and mailing the requested information to the Corporation) could substantially reduce the time allowed to provide supplementary information.

The Board believes that these concerns are well-founded and has therefore provided a 45-day time period for submission of supplementary information in the final rule. The Board believes that a 45-day time period will allow accountholders ample time to provide supplementary information. In addition, the Board believes that an extension of this period for submission of additional information will not adversely affect the Corporation's ability to expeditiously resolve insurance appeals.

The Board also has determined to modify the proposed amendment to extend the period during which the Director may require additional information from the accountholder. The proposal provided that the Director could request such information within 30 days of the date of receipt of the request for reconsideration. The proposed and final amendment, however, permits an accountholder to voluntarily amend or supplement its reconsideration request within 60 days from the date of the Corporation's receipt of the request. Thus, the Board believes that for purposes of consistency and simplicity, the Corporation also should have 60 days from the date of receipt of the reconsideration request to require additional information from the accountholder. The Board believes that this modification will not adversely affect the accountholder because under both the proposed and final regulations, the Corporation cannot grant or deny the reconsideration request until the time period during which the accountholder may voluntarily amend or supplement its request expires.

The proposal further provided that, in the event the Corporation failed to grant

or deny an accountholder's request for reconsideration within 60 days from the last day on which an accountholder might amend, supplement or submit additional information to its request for reconsideration, the request for reconsideration would be deemed to be denied. One commenter objected to this provision, contending that denials of requests for reconsideration should be accompanied by a written statement in order to promote confidence and understanding among depositors. This commenter also argued that the accountholder should not have to bear the consequences if the Corporation is unable to adequately consider and evaluate requests for reconsideration in a timely fashion.

The Board has taken these comments into consideration and has determined that this provision should not be modified. This provision was initially included for the benefit of accountholders and is intended to address the exceptional situation where, due to a large volume of requests for reconsideration filed, a determination with regard to an accountholder's request is not made within the prescribed time period. Because the failure of the Director to act within the specified time frame constitutes a final agency action for purposes of judicial review, the accountholder would than be able to seek immediate judicial review.

The Board also believes that the provision is fair to the accountholder because the accountholder will be advised of the reasons that insurance coverage was denied in the initial determination. The Board notes that the Corporation will acknowledge receipt, in writing, of the accountholder's request for reconsideration. The Board believes that such acknowledgment will provide the accountholder with notice of the date on which the 60-day period will expire. The Board has therefore adopted the provision as proposed.

The proposal also provided that an accountholder's failure to file a request for reconsideration would be deemed to be a waiver of any objection to the initial determination. Similarly, the proposal deemed an accountholder's failure in its request for reconsideration to object to a part of the initial determination to be a waiver of any objection to that part of the initial determination. The Board received no comments opposed to these amendments, and is adopting these provisions as proposed.

3. Determination on Reconsideration

The proposed amendments extended the time period for the Director's issuance of a determination on reconsideration from 90 to 180 days from the date the request for reconsideration was granted. The proposal further provided that the Director's failure to issue a written determination within the allotted time period would be deemed to constitute a denial of the reconsideration claim. One commenter objected to this provision of the rule, claiming that an accountholder should be entitled to receive a written determination containing the reasons for the denial of the reconsideration claim.

It is the view of the Board that the proposed provision will best serve its dual goals of settling accountholder's claims fairly and as expeditiously as possible. Further, by setting a specific time in which a determination must be made, the proposed amendment allows accountholders to more readily seek judicial review of a decision. In addition, the initial determination will provide the accountholder with the basis for denial of insurance coverage. For these reasons, the Board is adopting this provision as proposed.

4. Judicial Review

The proposed amendments added a new section to the Insurance Regulations concerning judicial review of final insurance determinations. The proposal provided that an accountholder may seek judicial review of any determination on reconsideration issued by the Director under paragraph (d)(4) or of any initial determination if the accountholder filed a request for reconsideration and such request was denied pursuant to paragraph (d)(3)(iii)(c). The proposal further provided that an initial determination, which was not the subject of a request for reconsideration, does not constitute a final agency action for purposes of seeking judicial review. Thus, the proposal treated an accountholder's failure to file a request for reconsideration as a waiver of any objections to the initial determination and consequently deemed the accountholder to have accepted the initial determination. The Board received no comments concerning this section of the proposal and is therefore adopting the section as proposed.

5. Effective Date

The Board has determined that observation of the 30-day delay of effective date following publication of the regulation pursuant to 5 U.S.C. 553(d) and 12 CFR 508.14 is unnecessary because the amendments pertain to internal agency procedures and are basically technical in nature. The Board believes that immediate implementation of the rule would not adversely affect accountholders at insured institutions in default because accountholders would still have the same period of time in which to file a request for reconsideration. Immediate implementation of the rule will in fact benefit accountholders by setting forth procedures for submission of additional information and for amendment and supplementation of requests for reconsideration which are not set forth in the current rule. The Board further believes that the amendment, by eliminating the confusion that exists with regard to the current procedures, will heighten the efficiency of the reconsideration process and provide for speedier resolution of claims. The Board also notes that the purpose of some of the amendments is to codify policies and procedures that have been followed by the Board in reaching determinations on requests for reconsideration. Finally, the board notes that all comments received in response to the rule, although few in number, expressed support for the rule.

The Board has therefore determined to apply the rule to all requests for reconsideration filed on or after November 29, 1985, the effective date of the final rule. With respect to requests for reconsideration filed with the Director prior to November 29, 1985, but regarding which a determination has not been issued as of that date, such requests shall be deemed to have been filed on November 29, 1985, and the new procedures shall apply to such requests.

Final Regulatory Flexibility Analysis

Pursuant to section 3 of the Regulatory Flexibility Act, Pub. L. No. 96-354, 94 Stat. 1164 (1980), the Board is providing the following regulatory flexibility analysis:

1. *Need for and objectives of the rule.* These elements are incorporated above in **"SUPPLEMENTARY INFORMATION"** regarding the rule.

2. *Issues raised by comments and agency assessment and response.* These elements are incorporated above in **"SUPPLEMENTARY INFORMATION"** regarding the rule.

3. *Significant alternatives minimizing small-entity impact and agency response.* The Board is not aware of any alternatives to the proposal and no alternatives were offered by commenters.

List of Subjects in 12 CFR Part 564

Savings and loan associations.

Accordingly, the Federal Home Loan Bank Board hereby amends Part 564, Subchapter D, Chapter V of Title 12 of

the Code of Federal Regulations, as set forth below.

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 564—SETTLEMENT OF INSURANCE

1. The authority for 12 CFR Part 564 continues to read as follows:

Authority: Section 308, Pub L. 96–221; secs. 401, 402, 403, 405, 48 Stat. 1255, 1257, 1259, as amended; 12 U.S.C 1724, 1725, 1726, 1728; Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–48 Comp., p. 1071

2. Amend paragraph (d) of § 564.1 as follows:

Amend paragraph (d)(1) by inserting "initial" between the words "make" and "determinations" in the first sentence, inserting "or his or her designee" between "Corporation" and ("Director")", "made" between "determinations" and "by" in the second sentence, and removing the third sentence in its entirety;

Amend paragraph (d)(2) by substituting "*Initial determination*" for "*Determination by the Director of the Insurance Division*" in the heading, inserting "initial" between the words "such" and "determination" in the first sentence, and removing the last sentence and substituting the following sentence therefore: " * * *Failure of the accountholder to file with the Director a request for reconsideration pursuant to paragraph (d)(3) of this section shall be deemed to constitute acceptance of the initial determination by the accountholder."

Revise paragraphs (d)(3) and (d)(4) as set forth below; and add new paragraphs (d)(5), and (d)(6) and (d)(7) as set forth below:

§ 564.1 Settlement of insurance upon default.

* * * * *

(d) *Processing of insurance claims.*

(3) *Request for reconsideration—(i) Time for filing.* Within 60 days after issuance of an initial determination by the Director of the Insurance Division that all of a portion of an accountholder's account is uninsured, such accountholder may obtain reconsideration of the initial determination by filing with the Director a written request for reconsideration.

(ii) *Content of request.* Any request for reconsideration must include:

(*a*) A statement of the facts on which the claim for insurance is based;

(*b*) A statement of the basis for the initial determination to which the accountholder objects and the alleged error in such determination, including citations to applicable statutes and regulations

(*c*) Copies of the accountholder's records, maintained in good faith and in the ordinary course of business, which support the accountholder's claim for insurance;

(*d*) A separate indentification and statement of all facts and matters relied upon by the accountholder seeking reconsideration which were not previously provided to the Director of the Insurance Division, together with all records maintained in good faith and in the ordinary course of business which support the accountholder's claim for insurance, in the event that reconsideration is sought based on matters not available for consideration by the Director of the Insurance Division at the time of the issuance of the initial determination.

(iii) *Procedures for review of request.* (*a*) Within 60 days of the date of the Director's receipt of a request for reconsideration, the Director may request in writing that the accountholder submit additional facts and records in support of its request. If additional information is requested by the Director, the accountholder shall have 45 days from the date of issuance of such written request to provide such additional information. Failure by the accountholder to provide such additional information may, as determined solely by the Director, result in denial of the accountholder's request that the initial determination be reconsidered.

(*b*) Within 60 days from the date of the Director's receipt of a request for reconsideration, the accountholder may amend or supplement the request in writing. In the event that the accountholder does amend or supplement the request, the provisions of paragraph (d)(3)(iii) (*a*) of this section with respect to requests for additional information and responses to such requests shall apply with equal force to any such amendment or supplement to a request.

(*c*) Within 60 days from the last day on which an accountholder may either amend or supplement the request pursuant to paragraph (d)(3)(iii) (*b*) of this section or submit additional information to the Director pursuant to paragraphs (d)(3)(iii)(*a*)and (*b*), whichever is later in time, the Director shall in writing either grant or deny the accountholder's request that the initial determination be reconsidered. In the event that the Director fails to grant or deny the accountholder's request within such 60-day period, the request shall be deemed to be denied for purposes of paragraph (d)(5) of this section.

(iv) *Failure to file request results in waiver—*(*a*) *Complete waiver.* If an accountholder does not file a request for reconsideration within the time permitted under this section, any objection to the initial determination by the accountholder is waived.

(*b*) *Partial waiver.* If an accountholder does not object to a part of an initial determination in its request for reconsideration within the time permitted under this section, any objection by the accountholder to that part of the initial determination is waived.

(4) *Determination on reconsideration.* (i) Within 180 days from the date of the Directors' issuance of a grant of a request for reconsideration under paragraph (d)(3)(iii)(*c*), the Director shall issue a decision regarding the merits of the accountholder's claim for insurance set forth in the request for reconsideration, determining the extent of the accountholder's insurance pursuant to the rules of this Part.

(ii) The determination by the Director on reconsideration shall be provided to the accountholder in writing, stating the reason(s) for the determination, and shall constitute final agency action regarding the accountholder's claim for insurance.

(iii) If the Director determines that the accountholder is entitled to the amount of insurance claimed or a portion thereof, upon payment of such insurance the accountholder shall promptly surrender to the Corporation the certificate of claim in liquidation provided in connection with the initial determination. In the event that the Director determines that the accountholder is only entitled to a portion of the amount of insurance claimed, upon the accountholder's surrender of such certificate a new certificate of claim in liquidation will be provided which reflects the revised amount of the uninsured account.

(iv) Failure by the Director to issue a determination on reconsideration of the accountholder's claim for insurance within the 180-day period provided for under this paragraph (d)(4) shall be deemed to be a denial of such claim for purposes of paragraph (d)(5) of this section.

(5) *Judicial review.* (i) For purposes of seeking judicial review of actions taken pursuant to this section, only the following actions shall constitute final

agency action regarding an accountholder's claim for insurance:

(*a*) Any determination on reconsideration issued by the Director pursuant to paragraph (d)(4) of this section:

(*b*) Any initial determination made by the Director of the Insurance Division pursuant to paragraph (d)(2) of this section which was the subject of a request for reconsideration filed with the Director by the accountholder, if such request had been denied by the Director pursuant to paragraph (d)(3)(iii)(*c*) of this section.

(ii) Initial determinations made by the Director of the Insurance Division pursuant to paragraph (d)(2) of this section which are not the subject of requests for reconsideration filed with the Director pursuant to paragraph (d)(3) shall in no event be considered to constitute final agency action regarding an accountholder's claim for insurance for purposes of seeking judicial review of such determinations.

(iii) Failure by an accountholder to file a request for reconsideration with regard to an initial determination to which it objects shall constitute a filure by the accountholder to exhaust its available administrative remedies and, due to such failure, any objections to the initial determination shall be deemed to be waived in accordance with paragraph (d)(3)(iv) of this section and such initial determination shall be deemed to have been accepted by the accountholder pursuant to paragraph (d)(2) of this section.

(6) *Effective date.* The provisions of this paragraph (d) shall apply to all requests for reconsideration filed on or after November 29, 1985. With respect to requests for reconsideration filed with the Director prior to November 29, 1985, and where a determination has not been issued as of that date, such requests shall be deemed to have been filed on November 29, 1985, and the procedures set forth in this paragraph (d) shall apply.

(7) *Availability of reconsideration determinations.* The Corporation shall make available to the public copies of the Director's determination on reconsideration of insurance claims.

By the Federal Home Loan Bank Board

Jeff Sconyers,

Secretary.

[FR Doc. 85-28583 Filed 12-2-85; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 85-ASO-21]

Alteration of Transition Area, Atlanta, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the Atlanta, Georgia, transition area by lowering the floor of control airspace, from 1,200 feet to 700 feet, in the vicinity of Stone Mountain, Georgia. The additional controlled airspace is required so that aircraft operating in the area may be radar vectored at the cardinal altitude of 3,000 feet rather than at the existing altitude of 3,100 feet. This will; be beneficial to Instrument Flight Rule activities being conducted to and from DeKalb-Peachtree Airport.

EFFECTIVE DATE: 0901 GMT, January 16, 1986.

FOR FURTHER INFORMATION CONTACT: Donald Ross, Supervisor, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763-7646.

SUPPLEMENTARY INFORMATION:

History

On Tuesday, October 1, 1985, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by increasing the size of the Atlanta, Georgia, transition area. This action will provide additional controlled airspace for use by Air Traffic Control in radar vectoring of aircraft in the vicinity of Stone Mountain and DeKalb-Peachtree Airport (49 FR 40036). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. This amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in FAA Order 7400.6A dated January 2, 1985.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations increases the size of the Atlanta, Georgia, transition area and lowers the base of controlled airspace in the vicinity of Stone Mountain from 1,200 to 700 feet above the surface.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationaly current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Airspace, Transition area.

Adoption of the Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a) 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Public Law 97-449, January 12, 1983); [14 CFR 11.69]; 49 CFR 1.47.

§ 71.181 [Amended]

2. By amending § 71.181 as follows:

Atlanta, GA—[Amended].

By deleting the words "DeKalb-Peachtree Airport (lat. 33°52'30" N., long. 84°18'10" W.)," and substituting from them the words "DeKalb-Peachtree Airport (lat. 33°52'30" N., long. 84°18'08" W.); within a 6.5 mile radius of Stone Mountain (lwt. 33°48'22" N., long. 84°08"47" W.);".

Issued in East Point, Georgia, on November 20, 1985.

Jonathan Howe,

Director, Southern Region.

[FR Doc. 85-28624 Filed 12-2-85; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 85-AWA-1]

Establishment of Airport Radar Service Areas

Correction

In FR Doc. 85-26149, beginning on page 45718 in the issue of Friday, November 1, 1985, make the following corrections:

1. On page 45718, in the first column, the telephone number appearing in the last line under **FOR FURTHER INFORMATION CONTACT** should read "426-8783".

2. On page 45720, in the first paragraph of the column, in the twelfth and fourteenth lines, the acronyms "TRSA" and "ARSA" should read "ARSA" and "TRSA" respectively.

3. On page 45725, in the third column, the third from last line of the airspace description for Anchorage International Airport, AK [New] should read "bearing from the airport and thence via the".

4. On page 45726, in the third column, in the eleventh and twelfth lines of the airspace description for Whiting NAS, FL [New], the phrase "within a 1-mile radius" should read "within a 10-mile radius."

BILLING CODE 1505-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 210, 229 and 239

[Release Nos. 33-6612; 34-22655; 35-23916; IC-14809; FR-22; File No. S7-26-85]

Financial Statements and Regulation S-X; Technical Amendments to Rules and Forms

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: The Commission is adopting amendments to various rules and forms under the Securities Act of 1933 and the Securities and Exchange Act of 1934 (together, the "Securities Acts". These amendments eliminate rules which are duplicative of generally accepted accounting principles (GAAP) or otherwise unnecessary, clarify language or conform rules to existing staff interpretations and correct technical omissions and errors.

EFFECTIVE DATE: December 3, 1985.

FOR FURTHER INFORMATION CONTACT: John W. Albert or Lawrence Salva, Office of the Chief Accountant, (202-272-2130), or Howard Hodges, Division of Corporation Finance, (202-272-2553), Securities and Exchange Commission, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission is adopting amendments to various rules and forms under the Securities Acts in order to (1) eliminate rules which are duplicative of GAAP or otherwise unnecessary, (2) clarify language or conform rules to existing staff interpretations, and (3) corrrect technical omissions or errors. In some instances, the Commission's rules for financial reporting contained in Regulation S-X (S-X) are no longer necessary due to the subsequent establishment of standards by the Financial Accounting Standards Board. Amendments intended to eliminate unnecessary rules include the following:

—Rule 4-08(j)(2) of S-X regarding lease commitments. A transition provision is no longer necessary due to the passage of time.

—Rule 4-08(k) of S-X regarding disclosure of interest cost. This rule is now covererd by Statement of Financial Accounting Standards No. (SFAS) 34.

—Rule 4-08(l) of S-X concerning related party disclosures. Portions of this rule are being deleted as duplicative of SFAS 57. However, the Commission is retaining, in renumbered Rules 4-08(k) (1) and (2) of S-X, existing provisions requiring prominent disclosure of material related party transactions on the face of financial statements as well as disclosure of amounts of material related party transactions eliminated or not eliminated in the consolidated financial statements. In a related action, Rule 1-02(t) of S-X is amended to conform the definition of a related party to that in SFAS 57.

—Rule 4-09 of S-X dealing with replacement cost disclosures. A transition provision is no longer necessary due to the passage of time.

—Article 5A of S-X concerning development stage enterprises. This article is now duplicative of SFAS 7. However, because SFAS 7 does not apply to interim reports, a new Rule 10-01(a)(7) is being adopted in S-X to require appropriate disclosures in interim reports filed by development stage enterprises.

—Article 8 of S-X regarding Committees Issuing Certificates of Deposit. This article is no longer necessary since the forms prescribed for registering these securities have been rescinded.

In addition to these changes, other amendments are being adopted to clarify language or conform the rules to existing staff interpretations. Amendments for this purpose include:

—Rules 3-01 and 3-02 of S-X concerning the periods to be covered by financial statements. These rules are revised to cover reporting requirements for companies not yet in business for a full fiscal year. The revised rule codifies the staff's interpretation that such a company must include in its registration statement an audited balance sheet as of an interim date within 135 days of the filing along with audited statements of income and changes in financial position from inception to the balance sheet date.

—Rule 3-05(b) of S-X dealing with application of the significant subsidiary test in determining financial statement requirements for businesses acquired or to be acquired. The amended rule codifies the staff's interpretation permitting a registrant to update its financial statements to give effect to significant business acquisitions occurring subsequent to year-end and reported under Form 8-K.

—Rule 3-10(a) of S-X regarding the presentation of financial statements of guarantors and of affililates whose securities are used to collateralize registered securities. This rule is being amended to clarify that the requirements apply to any guarantor regardless of whether its securities are used as collateral.

—Rule 4-08(g) of S-X relating to disclosure of summarized financial information of unconsolidated subsidiaries and 50% or less owned persons. This rule is revised to clarify that summarized financial information must be provided if the requirements for a significant subsidiary are met either individually or in the aggregate. In addition, Rule 1-02(v) is expanded to set forth the staff's administrative practice of prohibiting the netting of loss entities against those reporting income for purposes of applying the income test.

—Rule 5-02(6)(a) of S-X concerning disclosures of LIFO inventories. The revised rule codifies the existing staff practice of permitting registrants to present major-classes of LIFO inventories at other than LIFO values when the method of calculating LIFO amounts does not allow for the practical determination of amounts by major classes.

—Rule 11-01 of S-X regarding pro forma financial information. The amended rule codifies existing practice of requiring pro forma financial information for certain real estate acquisitions. The amendment also

clarifies item 7(b)(1) of Form 8-K which presently requires the presentation of pro forma financial information for any transaction described in item 2 of Form 8-K (acquisition or disposition of assets). Instructions for the preparation of pro forma financial information to reflect the acquisition of real estate operations or properties have also been added.

Finally, other changes are being made to conform requirements or definitions of different rules and forms:

—Rules 3-03(d) and 10-01(b)(8) of S-X and item 21(c)(3) of Form S-18 dealing with management statements and adjustments required in unaudited financial information are being conformed to each other.

—Rule 3-15(a) of S-X is revised to incorporate the presentation requirements for real estate investment trusts and to eliminate a cross reference to requirements presently contained in Article 6.

—The income statement captions contained in Article 10 are being conformed to those in Article 9 thereby requiring the separate presentation of investment gains and losses regardless of size in interim reports of banks and bank holding companies.

—Item 601(b)(11) of Regulation S-K is being revised to include the presentation guidance in an interpretive release previously only referred to.[1]

—Rule 5-01 of S-X is being revised to reflect the elimination of Articles 5A and 8, and to correct typographical errors in reference to Article 9.

Background

On June 6, 1985 the Commission issued a release inviting public comment on proposed technical amendments to various Commission rules and forms.[2] The Commission received letters from seventeen commentators responding to the proposed amendments. Eight commentators represented accounting firms and groups, eight others were from industry, and one banker responded. The commentators suggested various revisions to the proposed amendments. The issues most frequently addressed were (1) related party disclosures, (2) the significant subsidiary test, (3) summarized finanical information and (4) the exhibit computation of earnings per share.

[1] Securities Act Release No. 5133 issued February 18, 1971 (36 FR 44831) requires an exhibit setting forth the computation of per share earnings unless the computation can be clearly determined from information contained in the filing.

[2] Securities Act Release No. 6585 (50 FR 23259).

The comments included in these letters have been considered and appropriate changes made in the final rules being adopted by the Commission. A discussion of the comments and the related Commission response follows.

Related Party Disclosures

Approximately half of the commentators addressed the proposed disclosures of related party transactions. They generally opposed the proposal to carry forward the existing requirements to disclose related party transactions on the face of the financial statements. These commentators suggested that management be given the option of making such disclosures either on the face of the financial statements or within the footnotes as permitted by SFAS 57.

The Commission has considered these views in reexamining the proposed disclosures of related party transactions. However, the Commission continues to believe that the effects of related party transactions should be prominently disclosed on the face of the financial statements. Because related party transactions cannot be presumed to have been conducted on an arms-length basis, the Commission believes that such prominent disclosure is necessary to highlight their effect on the financial statements.

Many of these same commentators also suggested that the rules specify that the requirements apply only to material transactions—which is the language contained in the existing requirements. The Commission proposed this change because the existing rule is redundant; requirements for related party disclosures, like all other financial disclosure requirements, are subject to a general materiality threshold unless otherwise specified in the rules.[3]

Significant Subsidiary Test

Commentators generally supported the proposed amendment which would permit a registrant, for purposes of applying the significant subsidiary test, to update its financial statements to give effect to significant business acquisitions occurring subsequent to year-end and reported under Form 8-K. Many of these commentators, however, would extend the amendment to other subsequent events, such as a securities offering, also having a material effect. One commentator suggested that rather than specifying circumstances to be considered, the rule should require use of the most recent interim financial statements in all cases.

In proposing these amendments, the Commission believed it appropriate to distinguish significant business acquisitions from other subsequent events. A business acquisition transacted after year-end may have a significant impact on the nature of a company's operations, thereby rendering the historical financial statements to be a poor indicator of relative significance. On the other hand, a securities offering made subsequent to year-end will generally result in an infusion of capital but have no direct effect on altering the company's operating history as an indicator of operating trends in the future. Furthermore, it is often difficult to separate the use of proceeds of a securities offering from a subsequent proposed business acquisition. Consequently, the Commission is not persuaded as to the appropriateness of expanding the circumstances under which registrants may apply the significance test against pro forma financial information.

Although the Commission does not believe it appropriate to revise the proposed rule at this time, it does recongize that there may be certain circumstances under which a subsequent event, other than a significant business acquisition, could trigger use of the later available financial information for purposes of applying the significance test. Registrants should bring these circumstances to the attention of the staff of the Division of Corporation Finance, who will evaluate the need for a rule exception on the basis of the specific factual circumstances involved.

Summarized Financial Information

The proposed amendments would codify the staff's administrative policy for determining when summarized financial informtion of unconsolidated subsidiaries and 50% or less owned persons should be presented. Under that policy, subsidiaries and other investees reporting losses are not to be aggregated with entities showing profits for purposes of applying the income component of the significant subsidiary test. Commentators generally supported the proposed codification of that staff practice but pointed out that the language in the proposed rule did not

[3] Rule 4-02 of S-X (17 CFR 210.4-02) indicates that if an amount which would otherwise be required with respect to any item is not material, it need not be separately set forth. However, it should be noted that in ASR No. 41, the Commission stated, "it should be pointed out, however, that in some cases the significance of an item may be independent of the amount involved. For example, amounts due to and from officers and directors, because of their special nature and origin, ought generally to be set forth separately even though the dollar amounts involved are relatively small . . ."

accomplish that purpose. The final rules being adopted have been rewritten pursuant to this suggestion.

While supportive of the separate income test for profitable and loss entities, commentators objected to the proposed revision which would prohibit the combining of loss subsidiaries and persons with those reporting profits for disclosure purposes. These commentators noted that because the entities comprising each group may change from year to year, frequent regrouping could impair the comparability of the reported summarized financial information.

The Commission sees merit to this suggestion, particularly when considering that an objective of permitting summarized presentation is to reduce reporting burdens. Accordingly, there is no prohibition against presenting combined summarized data for profit and loss entities included in the final rules. Of course, companies may elect to present loss entities separately if deemed appropriate to a meaningful presentation. In addition, there may be circumstances where additional disclosure, either within the footnotes or Management's Discussion and Analysis,[4] is necessary, such as where the combined results are not indicative of future trends. For example, the registrant may be planning to dispose of an entity reporting losses, thereby making disclosure of the profitable contributor meaningful to an analysis of future trends.

Exhibit Supporting Earnings Per Share

The issue focused on by the most commentators was the proposed revision to the exhibit showing computation of earnings per share. Commenters generally opposed the revisions—focusing particularly on the requirement to show the computation of fully diluted earnings per share even when the effect is less than 3% and therefore not presented on the income statement. Commentators characterized the exhibit requirement as unnecessary and potentially misleading to those users reviewing the fully diluted calculation where the effect is antidilutive.

The exhibit is not a new requirement but its description (found in Item 601(b) of Regulation S-K) was proposed for revision simply to incorporate the interpretive guidance of a Securities Act Release previously only referred to in the description. The Commission staff has found the exhibit to be useful in monitoring the calculation of earnings per share in complex capital structures. In addition, because the information is generally furnished only as an exhibit and not widely circulated to security holders, the Commission does not share commentators' concerns that the calculation may be misleading. Accordingly the revised exhibit description is adopted as proposed.

[4] See Regulation S-K, Item 303, 17 CFR 229.303.

Other Changes

The amended rules also include certain minor revisions intended to clarify the language in the proposed rules. In addition, the revised rules reflect the recent adoption of Form N-14 in Securities Act Release No. 6611.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (15 U.S.C. 605(b)) the Chairman of the Commission previously certified that adoption of these amendments will not have a significant impact on a substantial number of small entities. No comments were received on that certification.

Codification Update

The "Codification of Financial Reporting Policies" announced in Financial Reporting Release No. 1 (April 15, 1982) (47 FR 21028) is updated to remove section 212 titled, "Material Related Party Transactions which Affect the Financial Statement".

The codification is a separate publication issued by the Commission. It will not be published in the **Federal Register** Code of Federal Regulations System.

List of Subjects in 17 CFR Parts 210, 229, and 239

Accounting, Reporting and recordkeeping requirements, Securities

Text of Rules

The Commission hereby amends Title 17, Chapter II, of the Code of Federal Regulations as follows:

PART 210—FORM AND CONTENT OF AND REQUIREMENTS FOR FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, INVESTMENT COMPANY ACT OF 1940, AND ENERGY POLICY AND CONSERVATION ACT OF 1975

1. The authority citation for Part 210 is revised to read as follows:

Authority: Sections 6, 7, 8, 10 and 19 of the Securities Act of 1933, 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77aa(25)(26); sections 12, 13, 14, 15(d) and 23(a) of the Securities Exchange Act of 1934, 15 U.S.C. 78 *l*, 78m, 78n, 78o(d), 78w(a); sections 5(b), 10(a), 14 and 20(a) of the Public Utility Holding Company Act of 1935, 15 U.S.C. 79e(b), 79j(a), 79n, 79t(a); and sections 8, 20, 30, 31 and 38(a) of the Investment Company Act of 1940, 15 U.S.C. 80a-8, 80a-20, 80a-29, 80a-30, 80a-37(a), unless otherwise noted.

2. By revising paragraph (t) and adding paragraph 3 to the computational note following paragraph (v) of § 210.1-02 to read as follows:

§ 210.1-02 Definition of terms used in Regulation S-X (17 CFR Part 210)

* * * * *

(t) *Related parties.* The term "related parties" is used as that term is defined in the Glossary to Statement of Financial Accounting Standards No. 57, "Related Party Disclosures."

* * * * *

(v) *Significant subsidiary.* * * *

* * * * *

Computational note: For purposes of making the prescribed income test the following guidance should be applied:

* * * * *

3. Where the test involves combined entities, as in the case of determining whether summarized financial data should be presented, entities reporting losses shall not be aggregated with entities reporting income.

* * * * *

3. By revising paragraph (a) of § 210.3-01 to read as follows:

§ 210.3-01 Consolidated balance sheets.

(a) There shall be filed, for the registrant and its subsidiaries consolidated, audited balance sheets as of the end of each of the two most recent fiscal years. If the registrant has been in existence for less than one fiscal year, there shall be filed an audited balance sheet as of a date within 135 days of the date of filing the registration statement.

* * * * *

4. By revising paragraph (a) of § 210.3-02 to read as follows:

§ 210.3-02 Consolidated statements of income and changes in financial position.

(a) There shall be filed, for the registrant and its subsidiaries consolidated and for its predecessors, audited statements of income and changes in financial position for each of the three fiscal years preceding the date of the most recent audited balance sheet being filed or such shorter period as the registrant (including predecessors) has been in existence.

* * * * *

5. By revising paragraph (d) of § 210.3-03 to read as follows:

§ 210.3-03 Instructions to income statement requirements.

* * * * *

(d) Any unaudited interim financial statements furnished shall reflect all adjustments which are, in the opinion of management, necessary to a fair statement of the results for the interim periods presented. A statement to that effect shall be included. Such adjustments shall include, for example, appropriate estimated provisions for bonus and profit sharing arrangements normally determined or settled at year-end. If all such adjustments are of a normal recurring nature, a statement to that effect shall be made; otherwise, there shall be furnished information describing in appropriate detail the nature and amount of any adjustments other than normal recurring adjustments entering into the determination of the results shown.

* * * * *

6. By revising paragraph (b)(1) of § 210.3-05 to read as follows:

§ 210.3-05 Financial statements of businesses acquired or to be acquired.

* * * * *

(b) *Periods to be presented.* (1) If securities are being registered to be offered to the security holders of the business to be acquired, the financial statements specified in §§ 210.3-01 and 210.3-02 shall be furnished for the business to be acquired, except as provided otherwise for filings on Form N-14, S-4 or F-4. In all other cases, financial statements of the business acquired or to be acquired shall be filed for the periods specified in this paragraph or such shorter period as the business has been in existence. The financial statements covering fiscal years shall be audited except as provided in Item 15 of Schedule 14A, (§ 240.14a-101 of this chapter) with respect to certain proxy statements or in registration statements filed on Forms N-14, S-4 or F-4 (§ 239.23, 25 or 34 of this chapter). The periods for which such financial statements are to be filed shall be determined using the conditions specified in the definition of significant subsidiary in § 210.1-02(v) as follows:

(i) If none of the conditions exceeds 10 percent, financial statements are not required. However, if the aggregate impact of the individually insignificant businesses acquired since the date of the most recent audited balance sheet filed for the registrant exceeds 20%, financial statements covering at least the substantial majority of the businesses acquired, combined if appropriate, shall be furnished. Such financial statements shall be for at least the most recent fiscal year and any interim periods specified in §§ 210.3-01 and 210.3-02.

(ii) If any of the conditions exceeds 10 percent, but none exceed 20 percent, financial statements shall be furnished for at least the most recent fiscal year and any interim periods specified in §§ 210.3-01 and 210.3-02.

(iii) If any of the conditions exceeds 20 percent, but none exceed 40 percent, financial statements shall be furnished for at least the two most recent fiscal years and any interim periods specified in §§ 210.3-01 and 210.3-02.

(iv) If any of the conditions exceeds 40 percent, the full financial statements specified in §§ 210.3-01 and 210.3-02 shall be furnished.

The determination shall be made by comparing the most recent annual financial statements of each such business to the registrant's most recent annual consolidated financial statements filed at or prior to the date of acquisition. However, if the registrant made a significant acquisition subsequent to the latest fiscal year-end and filed a report on Form 8-K which included audited financial statements of such acquired business for the periods required by this section and the pro forma financial information required by § 210.11, such determination may be made by using the pro forma amounts for the latest fiscal year in the report on Form 8-K rather than by using the historical amounts for the latest fiscal year of the registrant. The tests may not be made by "annualizing" data.

* * * * *

7. By revising § 210.3-10 to read as follows:

§ 210.3-10 Financial statements of guarantors and affiliates whose securities collateralize an issue registered or being registered.

(a) For each guarantor of any class of securities of a registrant and for each of the registrant's affiliates whose securities constitute a substantial portion of the collateral for any class of securities registered or being registered, there shall be filed the financial statements that would be required if the guarantor or affiliate were a registrant and required to file financial statements. However, financial statements need not be filed pursuant to this provision for any person whose statements are otherwise separately included in the filing on an individual basis or on a basis consolidated with its subsidiaries.

(b) For the purposes of this provision, securities of a person shall be deemed to constitute a substantial portion of collateral if the aggregate principal amount, par value, or book value of the securities as carried by the registrant, or the market value of such securities, whichever is the greatest, equals 20 percent or more of the principal amount of the secured class of securities.

8. By revising paragraph (a) of § 210.3-15 to read as follows:

§ 210.3-15 Special provisions as to real estate investment trusts.

(a)(1) The income statement prepared pursuant to § 210.5-03 shall include the following additional captions between those required by § 210.5-03.15 and 16: (i) Income or loss before gain or loss on sale of properties, extraordinary items and cumulative effects of accounting changes, and (ii) gain or loss on sale of properties, less applicable income tax. (2) The balance sheet required by § 210.5-02 shall set forth in lieu of the captions required by § 210.5-02.31(a)(3): (i) The balance of undistributed income from other than gain or loss on sale of properties and (ii) accumulated undistributed net realized gain or loss on sale of properties. The information specified in §210.3-04 shall be modified similarly.

* * * * *

9. By revising paragraph (g) of § 210.4-08 to read as follows:

§ 210.4-08 General notes to financial statements.

* * * * *

(g) *Summarized financial information of subsidiaries not consolidated and 50 percent or less owned persons.* (1) The summarized information as to assets, liabilities and results of operations as detailed in §210.1-02(aa) shall be presented in notes to the financial statements on an individual or group basis for (i) subsidiaries not consolidated and (ii) for 50 percent or less owned persons accounted for by the equity method by the registrant or by a subsidiary of the registrant, if the criteria in § 210.1-02(v) for a significant subsidiary are met (A) individually by any subsidiary not consolidated or any 50% or less owned person or (B) on an aggregate basis by any combination of such subsidiaries and persons.

(2) Summarized financial information shall be presented insofar as is practicable as of the same dates and for the same periods as the audited consolidated financial statements provided and shall include the disclosures prescribed by § 210.1-02(aa). Summarized information of subsidiaries not consolidated shall not be combined for disclosure purposes with the summarized information of 50 percent or less owned persons.

* * * * *

10. By revising paragraph (j) of § 210.4-08 to read as follows:

§ 210.4-08 General notes to financial statements.

* * * * *

(j) *Leased assets and lease commitments of regulated enterprises subject to the rate-making process.* (1) This section is applicable to all regulated enterprises subject to the rate-making process that do not record capital leases (as defined by Statement of Financial Accounting Standards No. 13) as assets with associated liabilities.

(2) The following information shall be provided for capital leases covered by this rule.

(i) As of the date for each required balance sheet, the aggregate amounts of the assets and liabilities that would have been recorded in the accounts had all leases meeting the definition of a capital lease been recorded.

(ii) For each period for which an income statement is required, the aggregate effect on expenses had all assets obtained through leases meeting the definition of a capital lease been recorded as assets with associated liabilities and any additional information management believes is necessary as to the rate-making process.

* * * * *

11. By removing paragraph (k) of § 210.4-08 and by redesignating paragraph (l) as paragraph (k).

12. By revising the heading and paragraph (k)(1) of newly designated paragraph (k), and by removing newly designated paragraphs (k)(3) and (k)(4) as follows:

§ 210.4-08 General notes to financial statements.

* * * * *

(k) *Related party transactions which affect the financial statements.* (1) Related party transactions should be identified and the amounts stated on the face of the balance sheet, income statement, or statement of changes in financial position.

* * * * *

§ 210.4-09 [Removed]

13. By removing § 210.4-09 in its entirety.

14. By revising § 210.5-01 to read as follows:

§ 210.5-01 Application of §§ 210.5-01 to 210.5-04.

Sections 210.5-01 to 210.5-04 shall be applicable to financial statements filed for all persons except—

(a) Registered investment companies (see §§ 210.6-01 to 210.6-10).

(b) Employee stock purchase, savings and similar plans (see §§ 210.6A-01 to 210.6A-05).

(c) Insurance companies (see §§ 210.7-01 to 210.7-05).

(d) Bank holding companies and banks (see §§ 210.9-01 to 210.9-07).

(e) Brokers and dealers when filing Form X-17A-5 [249.617] (see §§ 240.17a-5 and 240.17a-10 under the Securities Exchange Act of 1934).

15. By revising paragraph 6(a) of § 210.5-02 to read as follows:

§ 210.5-02 Balance sheets.

* * * * *

6. *Inventories.* (a) State separately in the balance sheet or in a note thereto, if practicable, the amounts of major classes of inventory such as: (1) Finished goods; (2) inventoried costs relating to long-term contracts or programs (see (d) below and § 210.4-05); (3) work in process (see § 210.4-05); (4) raw materials; and (5) supplies. If the method of calculating a LIFO inventory does not allow for the practical determination of amounts assigned to major classes of inventory, the amounts of those classes may be stated under cost flow assumptions other than LIFO with the excess of such total amount over the aggregate LIFO amount shown as a deduction to arrive at the amount of the LIFO inventory.

* * * * *

§§ 210.5A-01 and 210.5A-02 [Removed]

16. By removing §§ 210.5A-01 and 210.5A-02 (Article 5A) in their entirety.

§§ 210.8-01 through 210.8-03 [Removed]

17. By removing §§ 210.8-01, 210.8-02 and 210.8-03 (Article 8) in their entirety.

18. By revising the last sentence of paragraph (a)(3) of § 210.10-01 to read as follows:

§ 210.10-01 Interim financial statements.

* * * * *

(a) * * *

(3) * * * Notwithstanding these tests, § 210.4-02 applies and de minimis amounts therefore need not be shown separately, except that registrants reporting under § 210.9 shall show investment securities gains or losses separately regardless of size.

* * * * *

19. By adding new paragraph (a)(7) to § 210.10-01 to read as follows:

§ 210.10-01 Interim financial statements.

(a) * * *

(7) In addition to the financial statements required by paragraphs (a)(2), (3) and (4) of this section, registrants in the development stage shall provide the cumulative financial statements (condensed to the same degree as allowed in this paragraph) and disclosures required by Statement of Financial Accounting Standards No. 7, "Accounting and Reporting by Development Stage Enterprises" to the date of the latest balance sheet presented.

* * * * *

20. By revising paragraph (b)(8) of § 210.10-01 to read as follows:

§ 210.10-01 Interim financial statements.

* * * * *

(b) * * *

(8) Any unaudited interim financial statements furnished shall reflect all adjustments which are, in the opinion of management, necessary to a fair statement of the results for the interim periods presented. A statement to that effect shall be included. Such adjustments shall include, for example, appropriate estimated provisions for bonus and profit sharing arrangements normally determined or settled at year-end. If all such adjustments are of a normal recurring nature, a statement to that effect shall be made; otherwise, there shall be furnished information describing in appropriate detail the nature and amount of any adjustments other than normal recurring adjustments entering into the determination of the results shown.

* * * * *

21. By redesignating paragraphs (a) (5) and (6) of § 210.11-01 as (a) (6) and (7) respectively, and by adding a new paragraph (a)(5) to read as follows:

§ 210.11-01 Presentation requirements.

(a) * * *

(5) During the most recent fiscal year or subsequent interim period for which a balance sheet is required by § 210.3-01, the registrant has acquired one or more real estate operations or properties which in the aggregate are significant, or since the date of the most recent balance sheet filed pursuant to that section the registrant has acquired or proposes to acquire one or more operations or properties which in the aggregate are significant.

* * * * *

22. By redesignating paragraphs 5 and 6 of Instructions to § 210.11-02(b) as 6 and 7 respectively; and by adding a new paragraph 5 to the Instructions to read as follows:

§ 210.11-02 Preparation requirements.

* * * * *

(b) * * *

Instructions. * * *

5. Adjustments to reflect the acquisition of real estate operations or properties for the pro forma income statement shall include a depreciation charge based on the new accounting basis for the assets, interest financing on any additional or refinanced debt, and other appropriate adjustments that

can be factually supported. See also Instruction 4 above.

* * * * *

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S-K

23. The authority citation for Part 229 continues to read as follows:

Authority: Secs. 6, 7, 8, 10, 19(a), 48 Stat. 78, 79, 81, 85; secs. 12, 13, 14, 15(d), 23(a), 48 Stat. 892, 894, 901; secs. 205, 209, 48 Stat. 906, 908; sec. 203(a), 49 Stat. 704; secs. 1, 3, 8, 49 Stat. 1375, 1377, 1379; sec. 301, 54 Stat. 857; secs. 8, 202, 68 Stat. 685, 686; secs. 3, 4, 5, 6, 78 Stat. 565–568, 569, 570–574; sec. 1, 79 Stat. 1051; secs. 1, 2, 3, 82 Stat. 454, 455; secs. 1, 2, 3,–5, 28(c) 84 Stat. 1435, 1497; sec. 105(b), 88 Stat. 1503; secs. 8, 9, 10, 11, 18, 89 Stat. 117, 118, 119, 155; 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 78*l*, 78m, 78n, 78*l*(d), 78w(a).

24. By revising paragraph (b)(11) of § 229.601 to read as follows:

§ 229.601 Exhibits.

* * * * *

(b) * * *

(11) *Statement re computation of per share earnings.* A statement setting forth in reasonable detail the computation of per share earnings, unless the computation can be clearly determined from the material contained in the registration statement or report. The information with respect to the computation of per share earnings on both primary and fully diluted basis, presented by exhibit or otherwise, must be furnished even though the amounts of per share earnings on the fully diluted bases are not required to be presented in the income statement under the provisions of Accounting Principles Board Opinion No. 15. That Opinion provides that any reduction of less than 3% need not be considered as dilution (see footnote to paragraph 14 of the Opinion) and that a computation on the fully diluted basis which results in improvement of earnings per share not be taken into account (see paragraph 40 of the Opinion).

* * * * *

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

25. The authority citation for Part 239 continues to read as follows:

Authority: The Securities Act of 1933, 15 U.S.C. 77a, et seq.

26. By revising item 21 in Form S–18 in § 239.28 to read as follows:

(Form S–18 does not appear in the Code of Federal Regulations.)

§ 239.28 Form S–18, optional form for the registration of securities to be sold to the public by the issuer for an aggregate cash price not to exceed $7,500,000.

* * * * *

Item 21. Financial Statements

* * * * *

(c) * * *

(3) Any unaudited interim financial statements furnished shall reflect all adjustments which are, in the opinion of management, necessary to a fair statement of the results for the interim periods presented. A statement to that effect shall be included. Such adjustments shall include, for example, appropriate estimated provisions for bonus and profit sharing arrangements normally determined or settled at year-end. If all such adjustments are of a normal recurring nature, a statement to that effect shall be made; otherwise, there shall be furnished information describing in appropriate detail the nature and amount of any adjustments other than normal recurring adjustments entering into the determination of the results shown.

By the Commission.

John Wheeler,

Secretary.

November 21, 1985.

[FR Doc. 85–28610 Filed 12–2–85; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 260

[Docket No. RM85–13–000]

Revisions to FPC Form No. 8, "Underground Gas Storage Report," and FERC Form No. 16, "Report of Gas Supply and Requirements"; Order Suspending December 15, 1985; Filing of FPC Form No. 8

Issued: November 22, 1985

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final Rule Suspension Order.

SUMMARY: The Commission is suspending the requirement that Form No. 8, "Underground Gas Storage Report," be filed December 20, 1985, by jurisdictional natural gas companies that operate underground gas storage fields. This action is taken because the Commission has issued a final rule which would eliminate the mid-month filings of Form No. 8.

DATES: The Commission is suspending until further notice the December 20, 1985 filing deadline for the Form No. 8 report for the first fifteen days of December 1985 filing date for the FPC Form No. 8 report for November 1985. The December 5, 1985 is unchanged. This final rule is effective November 22, 1985.

FOR FURTHER INFORMATION CONTACT: Robert F. Riley, Federal Energy Regulatory Commission, Office of the General Counsel, 825 North Capitol Street, NE., Washington, DC 20426 (202) 357–8049.

SUPPLEMENTARY INFORMATION: Section 260.11 of the Commission's regulations provides that jurisdictional natural gas companies that operate underground natural gas storage fields must file FPC Form No. 8, "Underground Gas Storage Report," with the Commission by the fifth day of the months January through December and, in addition, by the twentieth day of the months December through March.

The Commission issued a final rule in the **Federal Register** of November 29, 1985, after reviewing Form No. 8 in the course of its ongoing program to reduce unnecessary reporting burdens. The Notice eliminates the 4 mid-month filings of FPC Form No. 8.

Accordingly, we find that good cause exists to suspend until further notice the upcoming December 20, 1985, filing date for FPC Form No. 8. The December 5, 1985, filing date for the FPC Form No. 8 report for November 1985 is unchanged.

The Commission Orders

The December 20, 1985 filing deadline for the Form No. 8 report for the first fifteen days of December 1985 is suspended until further notice.

Therefore § 260.11(b) is superseded in the phrase "the first and fifteenth day of each of the months of December through March" as it pertains to the month of December only.

By the Commission. Commissioners Trabandt and Naeve voted present.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 85–28524 Filed 12–2–85; 8:45 am]

BILLING CODE 6717–01–M

18 CFR Part 284

[Docket No. RM85–1–000 (Parts A–D)]

Regulation of Natural Gas Pipelines After Partial Decontrol

Issued: October 30, 1985.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order granting in part and denying in part request for clarification.

SUMMARY: On October 9, 1985, the Commission issued Order No. 436, a

Final Rule amending its regulations in, among others, Part 284, 50 FR 42408 (Oct. 18, 1985). In amending its regulations in this Part, the Commission adopted a simplified transportation program, including blanket certificates under section 7 of the Natural Gas Act, and transportation programs under section 311 of the Natural Gas Policy Act of 1978. In response to a petition filed by Panhandle Eastern Pipe Line Company, the Commission issues this order clarifying Order No. 436.

EFFECTIVE DATE: The amendments to Part 284 were effective October 9, 1985.

FOR FURTHER INFORMATION CONTACT: Paul Biancardi, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357-5418.

SUPPLEMENTARY INFORMATION:

Order Granting in Part and Denying in Part Request for Clarification

Before Commissioners: Raymond J. O'Connor, Chairman; A. G. Sousa and Charles G. Stalon.

In the matter of Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, (Panhandle Eastern Pipe Line Company); Docket No. RM85-1-000 (Parts A-D)

On October 21, 1985 Panhandle Eastern Pipe Line Company (Panhandle) filed a request, in accordance with Rule 212 of the Commission's Rules of Practice and Procedure, for clarification of certain discrete portions of Order No. 436.[1] Panhandle requests clarification on four aspects of existing and transitional transportation arrangements:

1. Order No. 436 provides for the "grandfathering" of certain existing transportation arrangements (*See* proposed § 284.105). However, Order No. 436 does not discuss "grandfathering" of existing transportation certificates obtained in accordance with the existing provisions of Part 284 subpart G pertaining to transportation by interstate pipelines for other interstate pipelines. It is assumed that these transportation arrangements were inended by the Commission to continue beyond November 1, 1985. Please clarify the Commission's intent.

2. Similarly, revised § 284.105(a) addresses transportation service authorized prior to November 1, 1985 and specifies the term that is to be grandfathered. However, § 284.105(a)(i) implies that any underlying transportation agreement must have been executed by October 9 so that a "term * * * was in effect on the date of issuance. * * *" Please clarify whether agreements executed or amended between October 9 and November 1 are grandfathered. Also, please clarify whether service (i.e. deliveries) must actually commence prior to November 1 in order to qualify for the grandfathered status.

3. Please clarify whether a grandfathered transportation arrangement can be amended (to change the term, points of receipt or redelivery, volume levels, or to change other conditions) after Novemer 1, 1985 without terminating the grandfathered status.

4. Finally, if an interstate pipeline elects to obtain a blanket certificate in accordance with revised Section 284.221, is it the Commission's intent and is there any authority under the Regulations for commencing transportation service on behalf of others after November 1, 1985 but before the new blanket transportation certificate is issued and accepted?

Panhandle's first two questions were clarified in the Technical Corrections issued by the Commission on October 24, 1985 in the above-captioned docket.[2] As explained therein, an authorized transportation arrangement under Order No. 60 (interstate pipelines on behalf of other interstate pipelines) may continue subject to the "grandfathering" provisions of Subparts B and C of Part 284, as amended. Therefore, Panhandle's assumption that these transportation arrangements were intended by the Commission to be, and in fact are, eligible for the "grandfathering" provisions of § 284.105 is correct.

The Technical Corrections also clarify that agreements executed or amended between October 10 and November 1, 1985 are not eligible for the "grandfathering" provisions. Section 284.105(a) requires the actual commencement of transportation on or before October 9, 1985 in order to be eligible for "grandfathering."

With respect to Panhandle's third question, a "grandfathered" transportation arrangement may not be amended after October 9, 1985, because § 284.105 specifically limits that transaction to the operative terms and conditions of the transportation arrangements that existed on October 9, 1985. Any changes to those terms and conditions would be considered an initiation of a new NGPA section 311 transportation transaction under § 284.102.

With respect to Panhandle's fourth question, if a pipeline elects to obtain a blanket certificate under section 284.221, transportation under the blanket certificate cannot be performed, under NGA section 7, until the blanket certificate for it has been issued.[3]

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-28542 Filed 12-2-85; 8:45 am]

BILLING CODE 6717-01-M

[1] 50 FR 42408 (October 18, 1985).

[2] Final Rule, Technical Corrections (October 24, 1985), 50 FR 45907, Nov. 5, 1985.

[3] If the pipeline wishes to commence a transportation service prior to issuance of that new blanket certificate, it may use other self-implementing authority available to it under NGPA section 311. If a pipeline elects to initiate NGPA section 311 transportation on an interim basis pending the issuance of the blanket certificate, however, it will incur the responsibilities attached to that authority, such as, *inter alia*, the filing fee, initial report, and termination notice when the tansaction is transferred to its blanket certificate authority. We note that under the express terms of § 284.10(a) the contract demand reduction and conversion options are only triggered by action beginning December 15, 1985.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 172, 173, 175, 181, and 184

[Docket No. 85N-0525]

Food Additives; Substances Generally Recognized as Safe; Editorial Amendments

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulations on food additives and food substances that are generally recognized as safe to correct certain Chemical Abstracts Registry Numbers (CAS Reg. Nos.) and typographical errors.

DATES: Effective December 3, 1985; objections to revised 21 CFR Parts 172, 173, and 175 by January 2, 1986.

ADDRESS: Written objections to revised 21 CFR Parts 172, 173, and 175 to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Alan Rulis, Center for Food Safety and Applied Nutrition (HFF-330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5676.

SUPPLEMENTARY INFORMATION: In the course of its work, FDA has discovered that incorrect CAS Reg. Nos. and certain other typographical errors have found their way into the agency's codified regulations on food additives and substances generally recognized as safe.

To remedy this situation, FDA is correcting these incorrect numbers and typographical errors. These corrections are nonsubstantive.

The portions of this final rule that revise 21 CFR Parts 181 and 184 are being promulgated under the authority of sections 201(s), 402, 409, and 701(a) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321, 342, 348, and 371(a)). Publication of this document constitutes final action on these changes under the Administrative Procedure Act (5 U.S.C. 553). Notice and public procedure on these corrections are unnecessary because FDA is merely remedying typographical and other inadvertent, nonsubstantive errors.

The portions of this final rule that revise 21 CFR Parts 172, 173, and 175 are being promulgated under the authority of sections 201 and 409 of the act (21 U.S.C. 321 and 348), which require the agency to consider objections to final rulemaking. The act also requires that FDA propose any changes that it makes on its own initiative in those regulations. However, FDA is dispensing with such notice in this case because it is not making any substantive changes but is merely correcting typographical and other inadvertent errors.

Any person who will be adversely affected by the revisions to 21 CFR Parts 172, 173, and 175 may at any time on or before January 2, 1986 file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 172

Food additives, Food preservatives, Spices and flavorings.

21 CFR Part 173

Food additives, Food processing aids.

21 CFR Part 175

Adhesives, Food additives, Food packaging.

21 CFR Part 181

Food additives, Prior-sanctioned food ingredients.

21 CFR Part 184

Direct food ingredients, Food ingredients, Generally recognized as safe food ingredients.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under the authority delegated to the Commissioner of Food and Drugs, Parts 172, 173, 175, 181, and 184 are amended as follows:

PART 172—FOOD ADDITIVES PERMITTED FOR DIRECT ADDITION TO FOOD FOR HUMAN CONSUMPTION

1. The authority citation for 21 CFR Part 172 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

§ 172.155 [Amended]

2. In § 172.155 *Natamycin (pimaricin)* in paragraph (a) by revising "(CAS Reg. No. 768–93–8)" to read "(CAS Reg. No. 7681–93–8)".

§ 1723.834 [Amended]

3. In § 172.834 *Ethoxylatged mono- and diglycerides* in the introductory text by removing "[Chemical Abstracts Registry No. 977051–30–1]".

§ 172.846 [Amended]

4. In § 172.846 *Sodium stearoyl lactylate* in the introductory text by revising "(CAS Reg. No. 977052–12–2)" to read "(CAS Ret. No. 25–383–997)".

PART 173—SECONDARY DIRECT FOOD ADDITIVES PERMITTED IN FOOD FOR HUMAN CONSUMPTION

5. The authority citation for 21 CFR Part 173 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

§ 173.310 [Amended]

6. In § 173.310 *Boiler water additives* in the list of substances in paragraph (c) in the entry "Polymaleic acid" by revising "[CAS Reg. No. 70247–90–4]" to read "[CAS Reg. No. 30915–61–8]".

PART 175—INDIRECT FOOD ADDITIVES: ADHESIVES AND COMPONENTS OF COATINGS

7. The authority citation for 21 CFR Part 175 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

§ 175.300 [Amended]

8. In § 175.300 *Resinous and polymeric coatings* in paragraph (b)(3)(xxiv) by revising "3(2-Xenoxyl)-1,2-epoxypropane" to read "3-(2-Xenolyl)-1,2-epoxypropane".

PART 181—PRIOR-SANCTIONED FOOD INGREDIENTS

9. The authority citation for 21 CFR Part 181 is revised to read as follows:

Authority: Secs. 201(s), 402, 409, 701, 52 Stat. 1046–1047 as amended, 1055–1056 as amended, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 342, 348, 371); 21 CFR 5.10

§ 181.27 [Amended]

10. In § 181.27 *Plasticizers* by revising "3-(2-Xenoyl)-1,2-epoxypropane" to read "3-(2-Xenolyl)-1,2-epoxypropane".

PART 184—DIRECT FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE

11. The authority citation for 21 CFR Part 184 continues to read as follows:

Authority: Secs. 201(s), 401, 409, 701, 52 Stat. 1046–1047 as amended, 1055–1056 as amended, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 342, 348, 371); 21 CFR 5.10.

§ 184.1090 [Amended]

12. In § 184.1090 *Stearic acid* by revising "5–11–4" to read "57–11–4".

§ 184.1099 [Amended]

13. In § 184.1099 *Tartaric acid* in paragraph (a) by revising "82–69–4" to read "87–69–4".

§ 184.1553 [Amended].

14. In § 184.1553 *Peptones* in paragraph (a) by removing "(CAS Reg. No. 977027–88–5)".

§ 184.1685 [Amended]

15. § 184.1685 *Rennet (animal-derived)* in paragraph (a) by revising "90001–98–3" to read "9001–98–3".

§ 184.1742 [Amended]

16. In § 184.1742 *Sodium carbonate* in paragraph (a) by revising "487–19–8" to read "497–19–8".

§ 184.1973 [Amended]

17. In § 184.1973 *Beeswax (yellow and white)* in paragraph (a) by revising

"(CAS Reg. No. MX 8012–89–3 and MX 8006–40–4)" to read "(CAS Reg. No. 8012–89–3)".

§ 184.4560 [Amended]

18. By redesignating § 184.4560 *Ox bile extract* as § 184.1560 and in paragraph (a) by removing "MX".

Dated: November 25, 1985.

Mervin H. Shumate,

Acting Associate Commissioner For Regulatory Affairs.

[FR Doc. 85–28635 Filed 12–2–85; 8:45 am]

BILLING CODE 4160–01–M

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21 CFR Parts 510 and 520

Animal Drugs, Feeds, and Related Products; Dichlorophene and Toluene Capsules

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to remove those portions of the regulations that reflect approval of a new animal drug application (NADA) for dichlorophene and toluene capsules held by Vortech Pharmaceuticals, Ltd. (formerly North American Pharmacal). The drug is labeled for use as an anthelmintic in dogs and cats. In a notice published elsewhere in this issue of the Federal Register, FDA is withdrawing approval of the NADA.

EFFECTIVE DATE: December 13, 1986.

FOR FURTHER INFORMATION CONTACT: John Augsburg, Center for Veterinary Medicine (HFV–216), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4093.

SUPPLEMENTARY INFORMATION: In a notice published elsewhere in this issue of the **Federal Register**, FDA is withdrawing approval of NADA 110–736 for dichlorophene and toluene capsules. This document removes those portions of the regulations that reflect approval of the NADA. Additionally, because North American Pharmacal does not currently hold a codified approved new animal drug, it is being removed from the list of sponsors of approved applications.

The agency has determined under 21 CFR 25.24(d)(3) (April 26, 1985; 50 FR 16636) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting requirements.

21 CFR Part 520

Animal drugs, Oral use.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Parts 510 and 520 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR Part 510 continues to read as follows:

Authority: Secs. 512, 701(a), 52 Stat. 1055, 82 Stat. 343–351 (21 U.S.C. 360b, 371(a)); 21 CFR 5.10 and 5.83.

§ 510.600 [Amended]

2. Section 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* is amended in paragraph (c)(1) by removing the entry for "North American Pharmacal" and in paragraph (c)(2) by removing the entry for "000298".

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

3. The authority citation for 21 CFR Part 520 continues to read as follows:

Authority: Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360(i)); 21 CFR 5.10 and 5.83.

§ 520.580 [Amended]

4. Section 520.580 *Dichlorophene and toluene capsules* is amended in paragraph (b)(1) by removing the entry "000298".

Dated: November 26, 1985.

Gerald B. Guest,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 85–28631 Filed 12–2–85; 8:45 am]

BILLING CODE 4160–01–M

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21 CFR Part 520

Oral Dosage Form New Animal Drugs not Subject to Certification; Sulfamethoxypyridazine Tablets

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations by removing the regulation that reflected approval of a new animal drug application (NADA) filed by Parke-Davis, providing for use of sulfamethoxypyridazine tablets in treating dogs and cats for sulfa-susceptible, gram-positive and gram-negative, bacterial infections. In a notice published elsewhere in this issue of the **Federal Register**, the agency is withdrawing approval of the subject NADA at the request of the sponsor.

EFFECTIVE DATE: December 13, 1985.

FOR FURTHER INFORMATION CONTACT: John K. Augsburg, Center for Veterinary Medicine (HFV–216), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4093.

SUPPLEMENTARY INFORMATION: In a notice published elsewhere in this issue of the **Federal Register**, the agency is withdrawing approval of Parke-Davis' NADA 12–821 which covers use of Midicel® Tablet. (sulfamethoxypyridazine) in treating dogs and cats for sulfa-susceptible, gram-positive and gram-negative, bacterial infections. This document removes the regulation that reflected approval of the NADA.

List of Subjects in 21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 520 is amended as follows:

PART 520—ORAL DOSAGE FROM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR Part 520 continues to read as follows:

Authority: Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)); 21 CFR 5.10 and 5.83.

§ 520.2300 [Removed]

2. Section 520.2300 *Sulfamethoxypyridazine tablets* is removed.

Dated: November 26, 1985.

Gerald B. Guest,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 85–28633 Filed 12–2–85; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 232 and 235

[Docket No. R-85-1267; FR-2188]

Mortgage Insurance—Changes in Interest Rates

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This change in the regulations decreases the maximum allowable interest rate on Section 232 (Mortgage Insurance for Nursing Homes) and on section 235 (Homeownership for Lower Income Families) insured loans. This final rule is intended to bring maximum permissible financing charges for these programs into line with competitive market rates.

EFFECTIVE DATE: November 20, 1985.

FOR FURTHER INFORMATION CONTACT: John N. Dickie, Chief, Mortgage and Capital Market Analysis Branch, Office of Financial Management, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone (202) 755-7270. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The following amendments to 24 CFR Chapter II have been made to decrease the maximum interest rate which may be charged on loans insured by this Department under section 232 (fire safety equipment) and section 235 of the National Housing Act. The maximum interest rate on the HUD/FHA section 232 (fire safety equipment) and section 235 insurance programs has been lowered from 11.50 percent to 11.00 percent.

The Secretary has determined that this change is immediately necessary to meet the needs of the market and to prevent speculation in anticipation of a change.

As a matter of policy, the Department submits most of its rulemaking to public comment, either before or after effectiveness of the action. In this instance, however, the Secretary has determined that advance notice and public comment procedures are unnecessary and that good cause exists for making this final rule effective immediately.

HUD regulations published at 47 FR 56266 (1982), amending 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, contain categorical exclusions from their requirements for the actions, activities and programs specified in § 50.20. Since the amendments made by this rule fall within the categorical exclusions set forth in paragraph (*1*) of § 50.20, the preparation of an Environmental Impact Statement or Finding of No Significant Impact is not required for this rule.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation issued on February 17, 1981. Analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local governmental agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In accordance with the provisions of 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule provides for a small increase in the mortgage interest rate in programs of limited applicability, and thus of minimal effect on small entities.

This rule was not listed in the Department's Semiannual Agenda of Regulations published on October 29, 1985 (50 FR 4166) pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance program numbers are 14.108, 14.117, and 14.120.

List of Subjects

24 CFR Part 235

Condominiums, Cooperatives, Low and moderate income housing, Mortgage insurance, Homeownership, Grant programs: Housing and community development.

24 CFR Part 232

Fire prevention, Health facilities, Loan programs: Health, Loan programs: Housing and community development, Mortgage insurance, Nursing homes, Intermediate care facilities.

Accordingly, the Department amends 24 CFR Parts 232 and 235 as follows:

PART 232—NURSING HOMES AND INTERMEDIATE CARE FACILITIES MORTGAGE INSURANCE

1. The authority citation for 24 CFR Part 232 continues to read as follows:

Authority: Sections 211, 232, National Housing Act, (12 U.S.C. 1715b, 1715w); Section 7(d), Department of Housing and Urban Development, (42 U.S.C. 3535(d)).

2. In § 232.560, paragraph (a) is revised to read as follows:

§ 232.560 Maximum interest rate.

(a) The loan shall bear interest at the rate agreed upon by the lender and the borrower, which rate shall not exceed 11.00 percent per annum, except that where an application for commitment was received by the Secretary before November 20, 1985, the loan may bear interest at the maximum rate in effect at the time of application.

* * * * *

PART 235—MORTGAGE INSURANCE AND ASSISTANCE PAYMENTS FOR HOME OWNERSHIP AND PROJECT REHABILITATION

3. The authority citation for 24 CFR Part 235 continues to read as follows:

Authority: Sections 211, 235, National Housing Act, (12 U.S.C. 1715b, 1715z); Section 7(d), Department of Housing and Urban Development Act, (42 U.S.C. 3535(d)).

4. In § 235.9, paragraph (a) is revised to read as follows:

§ 235.9 Maximum interest rate.

(a) The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed 11.0 percent per annum except that where an application for commitment was received by the Secretary before November 20, 1985, the loan may bear interest at the maximum rate in effect at the time of application.

* * * * *

5. In § 235.540, paragraph (a) is revised to read as follows:

§ 235.540 Maximum interest rate.

(a) On or after November 20, 1985, the loan shall bear interest at the rate agreed upon by the lender and the borrower, which rate shall not exceed 11.00 percent per annum, with the exception of applications submitted pursuant to feasibility letters, or outstanding conditional or firm commitments, issued prior to the effective date of the new rate. In these instances, applications will be processed at a rate not exceeding the applicable previous maximum rates, if the higher rate was previously agreed

upon by the parties. Notwithstanding these exceptions, the application will be processed at the new lower rate if requested by the mortgagee.

* * * * *

Dated: November 19, 1985.

Janet Hale,

General Deputy Assistant Secretary for Housing—Deputy, Federal Housing Commissioner.

[FR Doc. 85-28629 Filed 12-2-85; 8:45 am]

BILLING CODE 4210-27-M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2642

Non-Statutory Allocation Methods Not Requiring PBGC Approval

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This regulation sets forth certain modifications to two of the statutory methods for the allocation of withdrawal liability under the Multiemployer Pension Plan Amendments Act of 1980. The modifications are intended to relieve the administrative burden placed on certain plans by the Deficit Reduction Act of 1984. The effect of this regulation is to describe these modifications to the allocation methods and to waive the Pension Benefit Guaranty Corporation's right of prior approval of their adoption.

EFFECTIVE DATE: This regulation is effective December 3, 1985.

FOR FURTHER INFORMATION CONTACT: John Carter Foster, Attorney, Multiemployer Regulations Group, Corporate Policy and Regulations Department (611), 2020 K Street NW., Washington, DC 20006; telephone 202-254-4860 (202-254-8010 for TTY and TDD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

Background

Under the Multiemployer Pension Plan Amendments Act of 1980 (the "Multiemployer Act" or the "Act"), an employer that withdraws from a multiemployer plan may be liable to the plan for a proportionate share of the plan's unfunded vested benefits. The Multiemployer Act provides four methods for allocating this proportionate share, which is the basis for computing withdrawal liability: the presumptive method; the modified presumptive method; the rolling-5 method; and the direct attribution method. Additionally, the Multiemployer Act provides that a plan may adopt by plan amendment allocation methods that are different from those specified in the Act. Any such non-statutory method, however, is subject to approval by the Pension Benefit Guaranty Corporation (the "PBGC").

The Multiemployer Act was amended in 1984 by the Deficit Reduction Act ("DEFRA"). Before DEFRA, the withdrawal liability provisions of the Multiemployer Act were, in most instances, effective as of April 29, 1980, approximately five months before the date of enactment of the Multiemployer Act, September 26, 1980. As part of DEFRA, however, Congress voided this retroactive application of the withdrawal liability provisions and required plan administrators to refund any amounts paid in satisfaction of a withdrawal liability obligation that arose before September 26, 1980. At the same time, Congress enacted changes, termed conforming amendments, that adjusted certain other dates appearing in the Multiemployer Act to coincide with the September 26, 1980 date. The conforming amendments, as well as the provisions voiding pre-September 26, 1980 liabilities and mandating refunds, were effective July 18, 1984, and are found in section 558 of DEFRA.

Section 558 of DEFRA and its legislative history raised questions as to who it was to be applied. These questions were addressed in the Multiemployer Bulletin issued by the PBGC on March 6, 1985 (the "Multiemployer Bulletin"). In the Multiemployer Bulletin, the PBGC concluded that plan administrators should not recompute and reassess the withdrawal liabilities of employers that withdrew after the Multiemployer Act's effective date of September 26, 1980, but before DEFRA's effective date of July 18, 1984. The Multiemployer Bulletin also pointed out that the changes in the Multiemployer Act made by DEFRA will, in certain situations, affect individual employers who are assessed withdrawal liability on or after July 18, 1984, DEFRA's effective date. It added that plan administrators complying with DEFRA's changes and attempting to reallocate liabilities to achieve the same degree of allocation that existed before DEFRA may also be affected by an increased administrative burden.

This regulation is intended to ease some of the burden of complying with DEFRA's changes. It describes three permissible modifications to certain of the statutory allocation methods. Specifically, the modifications described in this regulation apply only to plans presently using the presumptive or the modified presumptive methods of allocation described in sections 4211(b) and 4211(c)(2) of the Act. (These modifications, however, do not apply to plans that primarily cover employees in the building and construction industry.) Plans using a modification of either of these two statutory methods permitted under 29 CFR § 2642.6 may also be amended to adopt the methods described in this regulation. Finally, these modifications may be adopted without requesting the PBGC's approval because the PBGC, pursuant to section 4211(c)(5)(B) of the Multiemployer Act, is waiving its approval authority for these methods.

This rule adds a new section, § 2642.8, to the Interim Regulation on Allocating Unfunded Vested Benefits, 29 CFR Part 2642. The PBGC is currently working on a proposed revision of Part 2642, but is promulgatig this rule at this time in order to provide immediate relief from some of the burden of complying with DEFRA's changes. This rule will be incorporated in the revision of Part 2642.

The Regulation

As stated in the Multiemployer Bulletin, the PBGC has concluded that the date changes in the allocation provisions in section 4211 do not apply to employers that withdrew between September 26, 1980 and July 17, 1984. Thus, these employers do not share in the reallocation of costs resulting from DEFRA. However, the application of the DEFRA changes in computing withdrawal liability can create certain amounts that would otherwise be charged to these employers. This situation can arise under the presumptive and the modified presumptive methods, as well as under the variations of these two methods described in § 2642.6 of the allocation regulation.

DEFRA altered the presumptive method in three respects. First, the date for the initial determination of unfunded vested benefits was changed from the close of the last plan year before April 29, 1980 to the close of the last plan year before September 26, 1980. Second, the first plan year ending after September 25, 1980, rather than April 28, 1980, became the first year for which annual changes in unfunded vested benefits had to be computed. Third, the denominator for allocating initial unfunded vested benefits was modified to exclude the contributions of all employers that withdrew before September 26, 1980.

Plans with plan years ending between September 26, 1979 and April 28, 1980 are not affected by the first two changes, because the plan year for determining initial unfunded vested benefits and the first plan year for

determining annual changes remain the same. The plans in this category may, however, be affected by the third change if any employer withdrew between April 29, 1980 and September 25, 1980, because the contributions of these employers are no longer includible in the denominator of the allocation fraction. The result is an increase in the allocable share of the initial unfunded vested benefits of each employer that was contributing to the plan as of the close of the last plan year ending before September 26, 1980.

As noted earlier, however, none of this increase can be assessed against employers that withdrew between September 26, 1980 and July 17, 1984. In order to avoid incomplete allocation, the PBGC staff has advised plan administrators to treat the unamortized increase in liabilities otherwise attributable to these employers as unassessable or uncollectible in the plan year within which July 18, 1984 falls and to reallocate these amounts as of the end of that plan year, as provided in section 4211(b)(4)(B)(iii) of the Multiemployer Act. (See the Multiemployer Bulletin at 6.)

Plans using the presumptive method and having plan years ending between April 29, 1980 and September 25, 1980 are further affected by DEFRA's date changes. These plans must recompute all elements of the allocation method, even if no employer's withdrawal liability has been voided. Thus, for a plan with a June 30th year end, DEFRA moves the initial determination date from June 30, 1979 to June 30, 1980, and subsequent computations of annual changes in unfunded vested benefits begin with plan year ending in 1981, rather than the one ending in 1980. Because each annual change is dependent on the initial unfunded vested benefits and the prior annual change amounts, the entire schedule of annual changes must be recomputed.

To ease these burdens, the PBGC is permitting plans using the presumptive method to adopt one of the two modifications specified in § 2642.8(b). Both methods relieve plans of the duty to recompute all unfunded vested benefit allocations as if DEFRA's changes were a part of the originally enacted Multiemployer Act. The first modification permits plan administrators to start the computation of allocable unfunded vested benefits from the last plan year before DEFRA's effective date. Thus, the close of the plan year immediately before July 18, 1984, becomes the initial allocation year and the point from which subsequent annual changes are computed. Plans adopting this modification must also be amended to specify that should any withdrawal liability for a withdrawal that took place before DEFRA's effective date not be paid, that amount will not be reallocated. This prevents such unpaid amounts from being twice allocated.

The second modification in § 2642.8(b) allows plan administrators to apply the presumptive method without regard to DEFRA's changes, commencing with the end of the first plan year following DEFRA's July 18, effective date. This modification allows plan administrators to merely reallocate under section 4211(b)(B)(iii) the unamortized balance of the assessed withdrawal liability amounts that were voided by DEFRA. Thus, this modification clarifies what is a reallocable amount under section 4211(b)(4)(B)(iii), while permitting plans to use the old pre-DEFRA denominators in the allocation fractions.

The effect of DEFRA on the modified presumptive method parallels the effect on the presumptive method; the date for determining the initial unfunded vested benefits is changed to the close of the last plan year ending before September 26, 1980; the total change calculation is moved to begin with the first plan year after September 25, 1980; and the denominator for allocating initial unfunded vested benefits is modified to exclude contributions of employers who withdrew before September 26, 1980. Paragraph (c) of § 2642.8 permits a plan affected by these changes to be amended to maintain the same denominator in the allocation fraction as existed before DEFRA. Other relief, however, is unnecessary because the modified presumptive method, unlike the presumptive method, reduces unfunded vested benefits as of the close of any plan year by the amount of assessed and collectible withdrawal liability. Any amounts otherwise allocable to withdrawn employers that are unassessable or uncollectible because of DEFRA's changes are included in the total unfunded vested benefits and become automatically allocable to current employers without further provision.

Section 2642.8(d) emphasizes that while a plan may adopt a retroactive effective date for any of these amendments, that retroactive date can be applied only with the consent of affected employers. This section is intended to ensure that plans act in accordance with applicable laws, in particular section 4214(b) of the Act.

E.O. 12291 and the Regulatory Flexibility Act

The Pension Benefit Guaranty Corporation has determined that this regulation is not a "major rule" for the purposes of Executive Order 12291, because it will not have an annual effect on the economy of $100 million or more; or create a major increase in costs or prices for consumers, individual industries, or geographic regions; or have significant adverse effects on competition, employment, investment, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Because of the need to provide guidance to plan administrators before they compute the withdrawal liability of employers that have withdrawn since DEFRA's passage, and because the effect of this regulation is to relieve administrative burdens that may be imposed by the statute on certain plans, the PBGC finds that notice of and public comment on this regulation prior to issuance are impractical and contrary to the public interest. For these same reasons and because this regulation does not require any actions by plans, the PBGC finds that good cause exists for making this regulation effective immediately.

Since no general notice of proposed rulemaking is required, the Regulatory Flexibility Act of 1980 has no application. (5 U.S.C. 601(2)).

Subjects in 29 CFR Part 2642 are "Employee Benefit Plans," "Pensions," and "Pension Insurance."

PART 2642—[AMENDED]

In consideration of the foregoing, Part 2642 of Subchapter F of Chapter XXVI of Title 29, Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 2642 is revised to read as follows:

Authority: Sections 4002(b)(3) and 4211(c)(1), (c)(2)(D), (c)(5)(A), (c)(5)(B), and (c)(5)(D), Pub. L. 93-46, 88 Stat. 829, 1004 (1974), as amended by sections 403(1) and 104 (respectively), Pub. L. 96-364, 94 Stat. 1208, 1302, 1228-29, 1232 (1980) (29 U.S.C. 1302(b)(3) and 1391 (c)(1), (c)(2)(D), (c)(5)(A), (c)(5)(B), and (c)(5)(D)).

2. By adding a new § 2642.8 to read as follows:

§ 2642.8 Deficit Reduction Act Modifications.

(a) *General.* This section sets forth modifications to the presumptive and modified presumptive methods that will alleviate some of the administrative burden on plans in complying with the changes made in section 4211 by the Deficit Reduction Act of 1984. These modifications may be adopted by plan amendment without the approval of the PBGC. These modifications may not be

adopted by plans that primarily cover employees in the building and construction industry.

(b) *The presumptive method.* A multiemployer plan that on the effective date of this section is using the presumptive method of section 4211(b), or a modification thereof permitted by § 2642.6, may adopt either of the modifications described in paragraph (b)(1) or (b)(2).

(1) The plan may amend its allocation method by substituting "July 17, 1984," in place of "September 25, 1980," and "July 18, 1984," in place of "September 26, 1980," where each appears in the description of the presumptive method found in section 4211(b), as amended by the Deficit Reduction Act. If this modification is adopted, the amendment shall also specify that no part of the withdrawal liability for a withdrawal that took place before July 18, 1984, is to be reallocated under section 4211(b)(4)(B)(iii) should such withdrawal liability not be paid.

(2) The plan may amend its allocation method to provide that unfunded vested benefits shall be allocated under section 4211(b) without regard to the Deficit Reduction Act's changes, but that the unamortized balance of the assessed amounts of withdrawal liability that were voided by the Deficit Reduction Act shall be treated as unassessable or uncollectible amounts under section 4211(b)(4)(B)(iii) in the plan year that includes July 18, 1984.

(c) *The modified presumptive method.* A multiemployer plan that on the effective date of this section is using the modified presumptive method of section 4211(c)(2) as amended by the Deficit Reduction Act, or a modification thereof permitted by § 2642.6, may be amended by substituting "April 29, 1980," in place of "September 26, 1980," and by substituting "April 28, 1980," in place of "September 25, 1980," where each appears in the allocation fraction described in section 4211(c)(2)(B)(ii).

(d) *Applicability of amendment.* The modifications to the presumptive and modified presumptive methods permitted by this section are not to be construed as increasing the withdrawal liability payable for a withdrawal that occurred before enactment of the Deficit Reduction Act. A plan amendment adopting a modification described in this section may, however, be applied to an employer with respect to liability for a withdrawal or partial withdrawal occurring before the date of adoption of the plan amendment with that employer's consent.

Issued at Washington, DC, on this 27th day of November 1985.

William E. Brock,

Chairman, Board of Directors, Pension Benefit Guaranty Corporation.

Issued pursuant to a resolution of the Board of Directors approving this regulation and authorizing its chairman to issue same.

Edward R. Mackiewicz,

Secretary to the Board of Directors, Pension Benefit Guaranty Corporation.

[FR Doc. 85-28708 Filed 12-2-85; 8:45 am]

BILLING CODE 7708-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 901

Approval of Permanent Program Amendment From the State of Alabama Under the Surface Mining Control and Reclamation Act of 1977

AGENCY: Office of Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule.

SUMMARY: OSM is announcing the approval of an amendment to the Alabama permanent regulatory program (hereinafter referred to as the Alabama program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment reduces the approved level of staffing for administration and enforcement of the Alabama program.

On April 2, 1985, Alabama submitted a proposed amendment to its approved regulatory program to decrease approved staffing levels from 71 positions to 58 positions.

OSM published a notice in the Federal Register on May 8, 1985, announcing receipt of the amendment and inviting public comment to the adequacy of the proposed amendment (50 FR 19390). The public comment period ended on June 7, 1985. The public hearing scheduled for June 3, 1985, was not held because no one expressed a desire to testify at the hearing.

After providing an opportunity for public comment and conducting a thorough review of the program amendment, the Director, OSM, has determined that the amendment to Alabama's program, as submitted on April 2, 1985, meets the requirements of SMCRA and the Federal regulatory program. Accordingly, the Director is approving the amendment.

The Federal rules codifying decisions concerning the Alabama permanent program at 30 CFR Part 901 are being amended to reflect this action.

EFFECTIVE DATE: December 3, 1985.

FOR FURTHER INFORMATION CONTACT: John T. Davis, Director, Birmingham Field Office, Office of Surface Mining Reclamation and Enforcement, 228 West Valley Avenue, 3rd Floor, Homewood, Alabama 35209; Telephone: (205) 254-0890.

SUPPLEMENTARY INFORMATION:

I. Background

Information regarding the general background on the Alabama State program, including the Secretary's finding, the disposition of comments and a detailed explanation of the conditions of approval of the Alabama program can be found at 47 FR 22020-22058 (May 20, 1982) and 48 FR 34026 (July 27, 1983).

II. Proposed Amendment

On April 2, 1985, Alabama submitted a proposed amendment to its approved regulatory program to decrease approved staffing levels. The amendment reduces the total staffing level from 71 positions to 58 positions. The positions deleted by this amendment are: On accounting clerk, one clerk steno in the legal section, six inspectors in the inspection and enforcement section, one clerk steno in the technical section, and four inspectors in the technical section. Alabama stated that the Alabama Surface Mining Commission (ASMC) "has over the last two years experienced recurring staff surpluses in certain positions but shortages in a very few." The State said that it wished to accomplish its objectives efficiently with as few personnel as necessary, especially in light of projected financial constraints. The State said that it has received approval from ASMC for overtime pay to compensate for temporary staff shortages should they occur. The State indicated that other minor adjustments have also been made in some position titles, but these changes result in no net change in total positions.

III. Director's Findings

The Director finds, in accordance with SMCRA and 30 CFR 732.17 that the proposed staffing amendment submitted by Alabama on April 2, 1985, meets the requirements of SMCRA and the Federal regulations. Section 503(a)(3) of SMCRA requires that the State regulatory authority have sufficient administrative and technical personnel to implement the approved program.

The Director notes that the Alabama program has operated at levels close to the amended level of 58, since the beginning of its program, and that the State has generally been able to meet program requirements in recent years, especially with regard to areas that are affected by staff members.

The field inspector force is amended to 19 approved inspectors, from the previous approved level of 25. OSM's Birmingham, Alabama Field Office has informed the Director that Alabama has been operating with a staff of 19 field inspectors in recent years and has met its required inspection frequency for the total number of in-spections required. The state has not met the required frequency of inspections on some sites, but the fact that the total number of in spections is adequate indicates that the State needs to adjust the frequencies of inspection on individual sites rather than increase the inspection force.

The State indicated in its April 2, 1985 submission that there are 413 inspectable units regulated under the provisions of SMCRA, which require 3660 inspections annually. Since Alabama has been meeting its inspection numbers in the past year with an inspector force of 19, this level is sufficient to fulfill the inspection program requirements. The State expects that 25 additional inspectable units (requiring 12 inspections each per year) will be added to the list as a result of a court decision in Round I of the case entitled *In Re: Permanent Surface Mining Regulation Litigation II* (D.D.C., 1984). These will be the coal preparation plants brought under SMCRA jurisdiction by the court's decision. The additional 300 inspections per year of coal preparation plants should be absorbed easily by the present inspection force of 19. In fact, there would still be some leeway for additional inspections as needed.

Alabama indicates in its submission that three clerical positions and four technical inspector (permit review) positions are being abolished, but that these positions are currently vacant. In fact Alabama indicates that the technical inspector positions have never been filled. The Director finds no currently identified problems in the Alabama program implementation related to these staff positions. Permit review has progressed at an acceptable rate and is expected to continue at present levels.

Therefore, the Director finds this amendment consistent with section 503(a)(3) of SMCRA which requires sufficient administrative and technical personnel to implement the approved program. The OSM Birmingham Field Office will continue to monitor Alabama's program implementation through oversight and, in the event that staffing problems are noted, will require appropriate staffing amendments.

III. Public Comments

No comments were received in response to the notice of proposed rulemaking published May 8, 1985.

IV. Director's Decision

The Director, based on the above findings, is approving the Alabama program amendment as submitted on April 2, 1985. The Federal rules at 30 CFR Part 901 are being amended to implement this decision.

V. Additional Determinations

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 901

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: November 19, 1985.

James W. Workman,

Deputy Director, Office of Surface Mining.

PART 901—ALABAMA

1. The authority citation for 30 CFR Part 901 continues to read as follows:

Authority: Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

2. 30 CFR 901.15 is amended by adding a new paragraph (g) to read as follows:

§ 901.15 Approval of regulatory program amendments.

* * * * *

(g) The amendment to the Alabama permanent regulatory program submitted to OSM on April 2, 1985, to revised approved staffing levels is approved effective December 3, 1985.

[FR Doc. 85–28685 Filed 12–2–85; 8:45 am]
BILLING CODE 4310–05–M

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30 CFR Part 944

Approval of Amendments to the Utah Permanent Program Under the Surface Mining Control Reclamation Act of 1977

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule.

SUMMARY: OSM is announcing the approval of amendments to the Utah Permanent Regulatory Program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). On August 13, 1984, Utah submitted proposed program amendments for OSM's approval pertaining to the definition of "affected area," enforcement and penalty requirements and bonding and insurance requirements (Administrative Record UT–336). The public was invited to comment on these provisions for 30 days (49 FR 40421, October 16, 1984). In a letter to the State dated January 28, 1985, OSM informed Utah of deficiencies in its proposed program amendments (Administrative Record UT–353). On March 6, 1985, Utah submitted additional materials to address the deficiencies identified by OSM. (Administrative Record No. UT–355). The public was invited to comment on these revised provisions for 15 days (50 FR 12834, April 1, 1985). In a letter to the State dated May 6, 1985, OSM informed Utah of additional deficiencies in its proposed amendments. On July 5, 1985, Utah submitted additional material to address the concerns identified by OSM. On July 29, 1985, OSM reopened the public comment period for 15 days (50 FR 30723).

After providing opportunity for public comment and conducting a thorough review of the program amendments, the Director has determined that with one

exception the amendments meet the requirements of SMCRA and the Federal regulations and is approving them. The one exception is in the Utah definition of "affected area." The Director is not approving that portion of the State's definition which conflicts with the opinion of the U.S. District Court for the District of Columbia in the case of *In Re: Permanent Surface Mining Regulation Litigation II*. The Federal rules at 30 CFR Part 944 codifying decisions concerning the Utah program are being amended to implement this action.

This final rule is being made effective immediately in order to expedite the State program amendment process and to encourage the State to conform its program to the Federal standards without undue delay; consistency of the State and Federal standards is required by SMCRA.

EFFECTIVE DATE: December 3, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Arthur W. Abbs, Chief, Division of State Program Assistance, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue NW., Washington, D.C. 20240; Telephone: (202) 343–5351.

SUPPLEMENTARY INFORMATION:

I. Background on Program Approval

On January 21, 1981, the Secretary of the Interior conditionally approved the Utah program under SMCRA for the regulation of the surface coal mining operations in the State (46 FR 5899–5915).

Information pertinent to the general background, revisions, modifications, and amendments to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Utah program can be found in the January 21, 1981 Federal Register (46 FR 5899–5915).

II. Background on Proposed Amendments

On August 13, 1984, the Utah Division of Oil, Gas and Mining (DOGM) submitted proposed program amendments for OSM's approval (Administrative Record No. UT–336). The amendments included changes pertaining to the definition of "affected area", enforcement and penalty requirements, and bonding and insurance requirements.

On October 16, 1984, OSM sought public comment on whether the proposed modifications to the Utah permanent program listed above satisfied the criteria for approval of State program amendments set forth at 30 CFR 732.15 and 732.17 (49 FR 40421). In a letter to the State dated January 28, 1985, OSM informed the State of deficiencies identified in the proposed program amendments (Administrative Record No. UT–353). On March 6, 1985, Utah submitted additional material to respond to the concerns raised by OSM in its January 28, 1985 letter (Administrative Record No. UT–355).

On April 1, 1985, OSM reopened the comment period for 15 days on these revised provisions (50 FR 12834). Following the close of the comment period, OSM identified four additional concerns related to the proposed amendments and notified the State of these concerns in a letter dated May 6, 1985. On July 5, 1985, Utah submitted additional revised material to respond to the concerns raised by OSM.

On July 29, 1985, OSM reopened the public comment period for 15 days until August 13, 1985 (50 FR 30723).

The communications between OSM and Utah concerning OSM's identification of deficiencies and the State's responses to correct the deficiencies are explicitly explained in the above cited administrative record numbers and **Federal Register** notices.

III. Director's Findings

The Director finds, in accordance with SMCRA and 30 CFR 732.17 and 732.15, that the program amendments submitted by Utah on August 13, 1984, with the revisions submitted on March 6 and July 5, 1985, meet the requirements of SMCRA and 30 CFR Chapter VII as discussed below.

1. Bond and Insurance Requirements

The Director has determined that the regulatory amendments under UMC and SMC 800 (bond and insurance requirements) which were adopted by the Utah Board of Oil, Gas and Mining on June 28, 1984, and revised on June 20, 1985, are consistent with SMCRA and no less effective than the Federal regulations at 30 CFR Part 800. These amendments were adopted primarily for the purpose of making existing provisions consistent with the Federal bond and insurance requirements Utah repealed UMC/SMC 800, 805, 806, 807 and 808 and adopted new or revised sections UMC/SMC 800.5, 800.11, 800.12, 800.13, 800.14, 800.15, 800.16, 800.17, 800.20, 800.21, 800.23, 800.30, 800.40, 800.50 and 800.60. The new or revised sections pertain to definitions, requirements to file a bond, form of the bond, the period of liability, determination and adjustment of bond amounts, general terms and conditions of bonds, bond requirements for underground coal mines and long-term related surface facilities and structures, surety bonds, collateral bonds, self-bonding, replacement of bonds, requirements for releasing performance bonds, forfeiture of bonds and terms and conditions for liability insurance.

2. Definition of "Affected Area"

The State replaced its previous definition for "affected area" with a definition that is virtually identical to the Federal definition for that term at 30 CFR 701.5 (1985). In its Round III opinion dated July 15, 1985, the U.S. District Court for the District of Columbia in the case of *In Re: Permanent Surface Mining Regulation Litigation II*, held that the Federal definition for "affected area" at 30 CFR 701.5 is inconsistent with the definition of "surface coal mining operations" in section 701(28)(B) of SMCRA and without a rational basis.

Section 701(28)(B) defines "surface coal mining operations" to include lands *affected by*, among other things, the use of existing roads. Therefore, the court accepted the Secretary's premise that not every road when used to some degree for coal haulage or mine access falls within the definition of "surface coal minng operations". The court then noted that, presumably, when hauling or access are among many uses made of a road, such as an interstate highway, the effect from the mining use is relatively minor, and thus the road need not be included as part of the surface coal mining operation. However, the court held that the Federal rule goes beyond what is called for in section 701(28) in exempting essentially all public roads without regard to the degree of effect that the mining use has on the road. Consequently, OSM is approving only those portions of the Utah definition that do not conflict with the court's decision. Specifically, the provision of the State's rule which exempts public roads without regard to the effect of mining use on the road is in conflict with the court's decision and is not being approved. That portion of the Utah rule not being approved is italized:

> The affected area shall include every road used for purposes of access to, or for hauling coal to or from, surface coal mining and reclamation operations, *unless the road (a) was designated as a public road pursuant to the laws of the jurisdiction in which it is located; (b) is maintained with public funds, and constructed, in a manner similar to other public roads of the same classification within the jurisdiction; and (c) there is substantial (more than incidental) public use.*

Following promulgation of a revised Federal definition for "affected area" which reflects the court's decision, OSM

will review the Utah definition and Utah may be required to amend its definition.

3. Inspection and Enforcement Requirements

Utah repeal the previously existing provisions contained in sections 843.11, 843.15, 843.16, 845.12, 845.13, 845.17, 845.18 and 845.19 and adopted new provisions under those sections. These sections pertain to cessation orders, informal public hearings, Board review of citations, when a penalty will be assessed, point system for penalties, procedures for assessment of civil penalties-proposed assessment, procedures for informal assessment conference, request for a formal hearing. In addition a new section UMC 843.20 pertaining to the compliance conference was added. The Director has determined that the revised enforcement provisions under section UMC 843.11, 843.15, 843.16 and 843.20 which were adopted by the Utah Board of Oil, Gas and Mining on June 28, 1984, and revised on June 20, 1985, incorporate sanctions no less stringent than those set forth under Section 521 of SMCRA and Part 843 of OSM's regulations and contain the same or similar procedural requirements relating thereto. With respect to the penalty provisions under section UMC 845.12, 845.13, 845.17, 845.118 and 845.19 adopted by the Board on June 28, 1984, and revised on June 20, 1985, the Director has determined that the State's rules incorporate penalties no less stringent than those set forth under section 518 of SMCRA and Part 845 of the Federal regulations and contain the same or similar procedural requirements relating thereto.

It should be noted that for the purpose of this rulemaking OSM has reviewed only those provisions of the State's enforcement regulations at UMC 843 and 845 which differ from the previously existing provisions. As a separate undertaking OSM is reviewing the Utah State program regulations in their entirety to identify revisions which may be needed to make the State rules consistent with Federal regulations which have been revised since the Secretary's approval of the Utah program. Upon completion of this review, OSM may require the State to adopt revisions to its enforcement and penalty regulations, and to other sections of the program regulations to bring the State program into conformance with the revised Federal regulations.

4. In addition to the changes described above, Utah has made minor changes to section UMC and SMC 700.1, the "Scope" sections for chapters I and II of the State regulations. These changes were merely for the purpose of clarification. The Director finds the revised provisions consistent with the Federal Act and regulations.

IV. Director's Decision

Based on the above findings, the Director, with one exception, is approving the amendment to the Utah program as submitted on August 13, 1984, with the revisions submitted by the State on March 6 and July 5, 1985. As discussed in item 2 of the Director's Findings, one deficiency does exist which Utah may have to correct following OSM's promulgation of a final rule revising the Federal definition for "affected area."

The Director is amending Part 944 of 30 CFR Chapter VII to implement this decision.

V. Additional Determinations

1. *Compliance with the National Environmental Policy Act*: The Secretary has determined that pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared for this rulemaking.

2. *Compliance with the Regulatory Flexibility Act:* The Secretary hereby determines that this proposed rule will not have a significant economic impact on small entities within the meaning of the Regulatory Flexibility Act, U.S.C. 601 et seq.). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. *Compliance with Executive Order No 12291*: On August 28, 1981, the Office of Management and Budget (OMB) granted the Office of Surface Mining an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for all actions taken to approve, or conditionally approve, State regulatory programs, actions, or amendments. Therefore a Regulatory Impact Analysis and regulatory review by OMB are not needed for this program amendment.

4. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by OMB under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 944

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Accordingly, 30 CFR Part 944 is amended as set forth herein.

Dated: November 20, 1985.

James W. Workman,

Deputy Director, Office of Surface Mining.

PART 944—UTAH

Part 944 of Title 30 is amended as follows:

1. The authority citation for Part 944 continues to read as follows:

Authority: Pub. L. 95-87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

2. Section 944.15 is amended by adding a new paragraph (f) to read as follows:

§ 944.15 Approval of amendments to State regulatory program.

* * * * *

(f) The following amendments are approved effective December 3, 1985: modifications to the Utah State Program regulations adopted by the Utah Board of Oil, Gas and Mining on June 28, 1984, as revised on June 20, 1985. Those modifications included the following. The following rules in existence prior to June 28, 1984, were repealed: SMC/UMC 800, 805, 806, 807, 808 and UMC 843.11, 843.15, 843.16, 845.12, 845.13, 845.17, 845.18 and 845.19. The following new or revised sections were adopted: (1) UMC/SMC 700.1, 800.5, 800.11, 800.12, 800.13, 800.14, 800.15, 800.16, 800.17, 800.20, 800.21, 800.23, 800.30, 800.40, 800.50, and 800.60; (2) UMC 843.11, 843.15, 843.16, 845.12, 845.13, 845.17, 845.18, 845.19 and 845.20; and (3) definition of "affected area" at UMC/SMC 700.5, with the exception of the exemption for public roads. The portion of the definition after the word "operations" is not approved:

The affected area shall include every road used for purposes of access to, or for hauling coal to or from, surface coal mining and reclamation operations, unless the road (a) was designated as a public road pursuant to the laws of the jurisdiction in which it is located; (b) is maintained with public funds, and constructed, in a manner similar to other public roads of the same classification within the jurisdiction; and (c) there is substantial (more than incidental) public use.

[FR Doc. 85-28684 Filed 12-2-85; 8:45 am]

BILLING CODE 4310-05-M

30 CFR Part 950

Amendment to the Wyoming Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule.

SUMMARY: OSM is announcing the approval in part and deferral in part of a proposed amendment submitted by the State of Wyoming as a modification to its permanent regulatory program, hereinafter referred to as the Wyoming program, which the Secretary of the Interior conditionally approved under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment consists of revised regulatory definitions of "bond", "essential hydrologic functions", "land use", "material damage to the hydrologic balance", "materially damage the quantity or quality of water", "subirrigation or flood irrigation agricultural activities", "substantially disturb", "unconsolidated streamlaid deposits", "undeveloped rangeland" and "valid existing rights". The amendment also adds two new definitions, those of "critical habitat" and "important habitat"; recodifies Chapters I and XIII of the rules and regulations of the Land Quality Division of the Department of Environmental Quality; and revises procedures and requirements relating to preapplication determinations for alluvial valley floors; mining in the vicinity of protected lands, structures and features; bonding; and liability insurance. After considering all comments from the public and other governmental agencies and the testimony received at the public hearing held on November 19, 1984, and after conducting a thorough review of the proposed amendment, the Director has determined that, with the exception of the definition of "valid existing rights" and the provision denying protection to privately owned historic sites, the proposed modifications meet the requirements of SMCRA and the Federal regulations. He is, therefore, approving the proposed amendment as submitted on September 21, 1984 and revised on June 11, 1985, with the exception of the revised definition of "valid existing rights", on which he is deferring action pending future Federal rulemaking, and the deletion of protection for privately owned historic sites, which he is not approving. The Federal regulations at 30 CFR Part 950 codifying decisions concerning the Wyoming program are being amended to implement this action.

This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to conform their programs to Federal standards in accordance with SMCRA without undue delay.

EFFECTIVE DATE: December 3, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Jerry Ennis, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, Federal Building, 100 East "B" Street, Room 2128, Casper, Wyoming 82601–1918, Telephone: (307) 261–5824.

SUPPLEMENTARY INFORMATION:

I. Background

Information concerning the general background on the Wyoming program submission and the approval process, as well as the Secretary's findings, the disposition of comments and an explanation of the initial conditions of approval can be found in the November 26, 1980 **Federal Register** (45 FR 78637–78684). Subsequent actions on conditions of approval and program amendments are identified at 30 CFR 950.11 and 905.15.

II. Submission of Amendment

On September 21, 1984, the State of Wyoming submitted certain proposed revisions and additions to the definitions contained in Chapter I of the rules and regulations of the Land Quality Division of the Department of Environmental Quality. The submission also included revisions to the procedures and requirements of Chapter XIII governing bonding, liablility insurance, mining in the vicinity of public roads and occupied dwellings, preapplication determinations relating to alluvial valley floors, and evaluation criteria for valid existing rights determinations.

The October 23, 1984 **Federal Register** announced receipt of the proposed revisions and requested public comments on their adequacy (49 FR 42579). In response to two requests, OSM held a public hearing on November 19, 1984 and prepared a transcript, which is available in the Wyoming Administrative Record. The public comment period closed on November 22, 1984.

On May 10, 1985, OSM notified the State of two apparent inadvertent errors (failure to include a revised definition of "bond" and omission of the identifying letters of individual soil horizons in the otherwise unchanged definitions of these horizons) identified as a result of the review of the September 21, 1984 submission. On June 11, 1985, the State submitted the intended revised definition of "bond" and restored the identifying letters to the definition of "soil horizons". The revised definition of "soil horizons" is identical to that originally approved.

On July 15, 1985, OSM reopened the comment period to allow the public to comment on the revisions submitted by the State on June 11, 1985 (50 FR 28595–28596). No additional comments were received during the comment period ending July 30, 1985.

III. Director's Findings

In accordance with SMCRA and 30 CFR 732.17, the Director finds that, with two exceptions, the proposed amendment as submitted by Wyoming on September 21, 1984, as clarified by accompanying materials, and as modified on June 11, 1985, meets the requirements of SMCRA and 30 CFR Chapter VII, as discussed below.

1. Definition of "Bond"

Wyoming has revised this definition at Chapter I, Section 2(i) to clarify that a bond is an indemnity agreement. The various types of bond in the Federal regulations at 30 CFR 800.5 are all defined as indemnity agreements. Therefore, the Director finds that this change is no less effective than the Federal definitions at 30 CFR 800.5.

2. Definitions of "Critical Habitat" and "Important Habitat"

Wyoming has added this definition at Chapter I, section 2(r) and (tt) for purposes of clarification and to ensure their use in a manner consistent with that of the Wyoming Game and Fish Department. Although OSM does not define these terms, the Director finds that the terms are defined in accordance with the Endangered Species Act and the Fish and Wildlife Coordination Act and are not inconsistent with SMCRA and its implementing regulations in terms of usage. Wyoming's Statement of Principal Reasons for Adoption clarifies that critical habitat will be defined in terms of specific population units, not State-wide populations.

3. Definition of "Essential Hydrologic Functions"

Wyoming has revised this definition at Chapter I, section 2(aa) to clarify that it relates to hydrologic conditions "that make water of a suitable quality and quantity usefully available" for specified agricultural activities. Although the corresponding Federal definition at 30 CFR 701.5 does not include the qualification that the water be of suitable quality and quantity, the Director finds that this provision is inherent in the term "usefully available for agricultural activities", which does appear in the Federal definition. Therefore, the revised definition is no less effective than the Federal rule at 30 CFR 701.5.

4. Definition of "Land Use"

Wyoming has revised this definition at Chapter I, section 2(xx) by moving the statement that support facilities include parking, storage, and shipping areas from the description of industrial or commercial land uses to the general land use description. It thus applies to support facilities for all types of land uses, not just those of an industrial or commercial nature. Although the Federal definition of "land use" is silent with respect to support facilities, the Director finds the inclusion of these types of support facilities to be no less effective than the Federal regulations at 30 CFR 701.5.

5. Definition of "Material Damage to the Hydrologic Balance"

Wyoming has revised this definition at Chapter I, section 2(yy) by qualifying that it refers to *significant* long-term or permanent adverse changes to the hydrologic regime. The Federal rules do not define this phrase, but, based on the legislative history of SMCRA and the accepted definitions of "material" and "significant" in common usage, the Director finds that these adjectives are synonymous in this context and that this change is no less stringent than SMCRA and no less effective than the Federal regulations.

6. Definition of "Materially Damage the Quantity or Quality of Water"

Wyoming has revised this definition at Chapter I, section 2(zz) to more closely resemble the wording of the Federal definition of this phrase at 30 CFR 701.5. The Director finds that the revised definition is no less effective than the Federal definition.

7. Definition of "Subirrigation or Flood Irrigation Agricultural Activities"

Wyoming has revised this definition to clarify that it includes only those activities involving the *successful* production of *agriculturally useful* animal or vegetable life, and that these determinations will be based upon regional agricultural practices. The Statement of Principal Reasons for Adoption accompanying the amendment explains that the determination of whether production is successful will be based on regionally tested practices in line with what a reasonable and prudent person would invest. Production failures due to poor management or changing economic conditions will not be considered.

Although neither SMCRA nor the corresponding Federal definition of "agricultural activities" at 30 CFR 701.5 explicitly include the "successful" and "agriculturally useful" qualifications, the language clearly implies these concepts. Therefore, the Director finds that the revised definition is no less stringent than section 510(b)(5) of SMCRA and no less effective than the Federal rules.

On October 1, 1984, the U.S. District Court for the District of Columbia, ruling in *In re: Permanent Surface Mining Regulation Litigation II* (Civil Action No. 79–1144), remanded the definition of " 'agricultural activities' or 'farming' " at 30 CFR 701.5 to the Secretary for reconsideration of whether Congress intended different meanings for the two terms. On February 21, 1985, the Secretary formally suspended the definition to comply with the Court's order (50 FR 7274–7278). When the Secretary promulgates new regulations, the Director will review the Wyoming program to determine if further changes are necessary.

8. Definition of "Substantially Disturb"

Wyoming has revised this definition at Chapter I, section 2(ssss) to clarify the activities subject to certain coal exploration requirements and to more closely conform to the revised Federal definition. The Director finds that the revised Wyoming definition is no less effective than the Federal definition at 30 CFR 701.5.

9. Definition of "Unconsolidated Streamlaid Deposits"

Wyoming has revised this definition at Chapter I, section 2(aaaaa) by replacing "precipitated" with "deposited" to more accurately describe the geologic origins of the material being defined. OSM does not define this term; however, the Director finds that the revised State definition is no less stringent than the term as used in the definition of "alluvial valley floors" at section 701(1) of SMCRA and no less effective than the use of the term in the same definition at 30 CFR 701.5.

10. Definition of "Undeveloped Rangeland"

Wyoming has revised this definition at Chapter I, section 2(ddddd) to clarify that the term does not include land on which cultivated crops, small grains and hay crops have been *successfully* grown. The previous definition did not expressly address the question of success. The Statement of Principal Reasons for Adoption clarifies that success will not be judged on the basis of improper management or economic conditions. Since the corresponding Federal rules at 30 CFR 701.5 define "undeveloped rangeland" as lands where the use is not specifically controlled and managed, the Director finds that the revisions to the Wyoming definition do not render it less effective than the Federal definition. Lands on which crops have not been successfully grown will not be specifically controlled and managed for that purpose.

11. Definition of "Valid Existing Rights"

Wyoming has revised this definition at Chapter I, section 2(fffff) to more closely conform to the revised Federal definition at 30 CFR 761.5, as promulgated on September 14, 1983. However, on March 22, 1985, the U.S. District Court for the District of Columbia, in *In re: Permanent Surface Mining Regulation Litigation II* (Civil Action No. 79–1144), remanded this definition to the Secretary for reconsideration and renotification. OSM will publish a notice in the **Federal Register** to implement the court's decision; this notice will indicate what effect the ruling will have on State programs. Accordingly, the Director is deferring action on this proposed amendment until this notice is published. Wyoming will be required to make any necessary changes at that time.

12. Alluvial Valley Floor Permitting Procedures

Wyoming has revised its permitting procedures at Chapter XIII, section 1(a)(i) to clarify that, if the Administrator has made a preapplication determination of the existence and extent of alluvial valley floors within the permit and adjacent areas, that determination will satisfy this provision and will be included in the permit application. The Director finds that this change is similar to and no less effective than the Federal regulations at 30 CFR 785.19(a)(1).

13. Section 522(e) Permitting Procedures

In addition to several clarifying and technical revisions, such as correcting references to the Code of Federal Regulations to reflect current nomenclature, Wyoming has revised its regulations at Chapter XIII, section 1(a)(v) in the following substantive areas:

a. Wild and Scenic Study Rivers

Wyoming revised Chapter XIII, section 1(a)(v)(A) to specifically protect river segments under study for inclusion in the Wild and Scenic Rivers System for a corridor extending not more than one-quarter mile from each bank, or the width of the study area, whichever is greater. On July 15, 1985, the U.S. District Court for the District of Columbia (*In re: Permanent Surface*

Mining Regulation Litigation II, Civil Action No. 79–1144) remanded the corresponding Federal regulation, 30 CFR 761.11(a), to the Secretary for revision because it limited the width of the protected corridor to one-quarter mile from each bank. The court ruled that section 522(e)(1) of SMCRA requires the Secretary to protect study river corridors to the full width of the study area in accordance with the Wild and Scenic Rivers Act (16 U.S.C. 1271 *et seq.*) and the regulations and administrative guidelines issued pursuant to it. The Director finds that the revised Wyoming rule requires protection of the entire width of the study corridor, and that it is therefore no less stringent than section 522(e)(1) of SMCRA.

b. Sites on the National Register of Historic Places

Wyoming has revised its rule at Chapter XIII, section 1(a)(v)(C) to protect only publicly owned sites on the National Register of Historic Places (NRHP). The Federal regulations at 30 CFR 761.11(c), as revised on September 14, 1983, contain a similar requirement; however, on July 15, 1985, the U.S. District Court for the District of Columbia ruled that section 522(e)(3) of SMCRA requires protection of both privately owned and publicly owned sites listed on the NRHP (*In re: Permanent Surface Mining Regulation Litigation II*, Civil Action No. 79–1144).

Therefore, pursuant to the court's ruling, the Director cannot approve Wyoming's proposed revision because it is inconsistent with section 522(e)(3) of SMCRA. That portion of the Wyoming rule not being approved in italicized as follows:

(C) On any lands which will adversely affect any publicly owned park or *any publicly owned* places included in the National Register of Historic Places, unless jointly approved by the administrator and the Federal, State or local agency with jurisdiction over the park or place.

Until OSM promulgates a revised rule which reflects the court's decision and notifies Wyoming of any required amendment, Wyoming must implement its rule in accordance with the court's decision, as discussed above.

c. Roads

Wyoming has revised Chapter XIII, section 1(a)(v)(D) to clarify that it applies to road closures as well as to road relocations and mining within 100 feet of the outside right-of-way line of any public road. The State has also added a sentence providing that the Administrator may rely upon the procedures and findings of the public road authority when specifically authorizing road relocations or closures.

The Federal regulations at 30 CFR 761.11(d)(2) allow road relocations, closures and mining within 100 feet of the outside right-of-way line where either the regulatory authority or the appropriate public road authority, pursuant to designation by the regulatory authority, so permits after providing public notice and an opportunity for a public hearing, and after making a written finding that the interests of the public and affected landowners will be protected. Since the Wyoming regulations, as revised, require that the Administrator provide public notice and opportunity for a public hearing and make the required written finding regardless of the involvement of the public road authority, the Director finds that the revisions to Chapter XIII, section 1(a)(v)(D) are not inconsistent with 30 CFR 761.11(d).

d. Occupied Dwellings

Wyoming has revised Chapter XIII, section 1(a)(v)(E) to provide that waivers allowing mining within 300 feet of occupied dwellings shall remain effective against subsequent purchasers who have actual or constructive knowledge of the waiver at the time of purchase. The State further defines constructive knowledge as existing when the waiver has been properly recorded or when mining has occurred within the 300-foot buffer zone at the time of purchase. The rule previously recognized waivers as effective only if the purchaser had actual knowledge of the waiver.

Since 30 CFR 761.12(e)(3) contains similar provisions, the Director finds that the changes proposed by Wyoming are no less effective than the Federal rules.

14. Bonding

Wyoming has revised its bonding requirements at Chapter XIII, section 2(d)(iii) by adding a new paragraph (A) providing for separate bonding of isolated, clearly defined areas in need of extended liability at the time the remainder of the permit area qualifies for bond release. It has also revised the previous language to clarify that third-party actions required to implement an approved alternative postmining land use need not be covered by the bond. Since these provisions are virtually identical to those of 30 CFR 800.13(b) and (d)(2), respectively, the Director finds that these changes are no less effective than the Federal regulations.

In addition, the State has deleted the self-bonding provisions previously located at section 2.g., as these either duplicated or contradicted the revised self-bonding regulations of Chapter XII, which the Director approved on February 28, 1985 (50 FR 8108). The Director finds that this deletion does not render the State self-bonding requirements less effective than the Federal regulations at 30 CFR 800.23.

Wyoming has also added new requirements at section 2(h) governing certificates of deposit. In general, these requirements parallel those set forth at 30 CFR 800.21(a)(3) and (a)(4); however, Wyoming has added a sentence providing that "the bond amount may be calculated to include any amount which would be deducted as a penalty for payment before maturity." The Federal regulations at 30 CFR 800.21(a)(2) require the collateral bonds, including certificates of deposit, be valued at current market value, not face value. Based on the explanation provided in the Statement of Principal Reasons for Adoption accompanying the amendment, the Director interprets this sentence as meaning that Wyoming will deduct all prepayment penalties when determining the value of certificates for bonding purposes if the certificates have such lengthy terms as to cause untimely reclamation of forfeiture sites.

With this understanding, the Director finds that the revise Wyoming regulations at Chapter XIII, section 2(h) are no less effective than the Federal regulations at 30 CFR 800.21(a)(2), (a)(3), and (a)(4).

15. Liability Insurance

Wyoming has revised its regulations at Chapter XIII, section 2(j) to include language similar to that at 30 CFR 800.60(b), requiring that the liability insurance policy be maintained in full force during the life of the permit or any renewal thereof, including the reclamation liability period. The Director finds that this change is no less effective than the Federal regulations at 30 CFR 800.60(b).

IV. Public Comments

The Director solicited public comment on the proposed amendment in the October 23, 1985 and July 15, 1985 **Federal Registers** (49 FR 42579 and 50 FR 28595–28596). Although no comments were received prior to the close of the final comment period on July 30, 1985, two individuals from the Powder River Basin Resource Council presented oral and written testimony at the public hearing held on November 19, 1984 in Cheyenne, Wyoming. A copy of the transcript of the hearing can be found in the Wyoming Administrative Record.

Pursuant to section 503(b) of SMCRA and 30 CFR 732.17(h)(10)(i), comments were also solicited from various Federal agencies, with comments received from the National Park Service, the Fish and Wildlife Service, the Department of Energy, and the High Plains Grasslands Research Station of the Agricultural Research Service of the Department of Agriculture.

The following discussion summarizes all comments received and the Director's responses.

Federal Agency Comments

1. The National Park Service (NPS) expressed concern that the Wyoming regulations at Chapter XIII, section 1(a)(v) appear to grant the Administrator the authority to determine whether an individual posseses valid existing rights to conduct surface coal mining operations on lands within the boundaries of the National Park System. The Director notes that all mining on Federal lands in Wyoming must be conducted in accordance with the cooperative agreement granting the state the authority to administer the permanent regulatory program on Federal lands in Wyoming. This agreement requires that OSM, not the State, make all valid existing rights determinations on Federal lands.

The NPS also expressed concern that it may not be notified of requests for valid existing rights determinations on areas under its jurisdiction. Both the Federal regulations at 30 CFR 761.12(b)(2) and the terms of the cooperative agreement require such notification.

2. The Fish and Wildlife Service (FWS) supported all changes contained in the subject amendment, but recommended several further changes for future consideration. Except for those recommendations concerning rules unaffected by this amendment, these concerns are discussed in succeeding comments.

3. The FWS recommended that the phrase "generally limited to grazing of livestock" be eliminated from the definition of "underdeveloped rangeland" at Chapter I, section 2 (ddddd) since this land often has other uses such as recreation and wildlife, and since it may contain critical or important wildlife habitats.

Since this term is used only in reference to the extent to which mining may be allowed on alluvial valley floors, a decision which SMCRA and the Federal regulations require to be based upon agricultural considerations, the Director does not agree. However, any such mining operations must still comply with the general fish and wildlife permitting requirements and performance standards, provisions which ensure the protection of critical and important habitats in accordance with all other Federal and State requirements.

4. The FWS recommends that the definition of "land use" at Chapter I, section 2(xx) be expanded to include undeveloped and developed rangeland so as to include both areas of native vegetation not actively managed for forage production and areas managed for wildlife in whole or in part. The Director finds that the Wyoming definition includes developed rangeland within the grazing land category ("lands where the indigenous vegetation is actively managed for grazing, browsing, or occasional hay production"). In addition, the Wyoming definition recognizes fish and wildlife habitat ("land dedicated wholly or partially to the production, protection or management of species of fish or wildlife") and undeveloped land as acceptable land use categories, thus addressing all FWS concerns.

The FWS also recommends deletion of the term "dedicated" in the description of fish and wildlife habitat as being too ambiguous. The Director does not agree, and since the FWS did not further explain its objection, he is unable to respond to this comment.

5. The Department of Energy stated that oil shale removal should not be included within the definition of "soft rock surface mining" at Chapter I, Section 2(ddddd) since it is not regulated under SMCRA.

Wyoming has not revised this definition in this amendment. The Director agrees that SMCRA does not provide for the regulation of surface mining of oil shale, but he notes that SMCRA does not prevent the State from so doing.

6. The High Plains Grasslands Research Station of the Agricultural Research Service of the Department of Agriculture commented on a number of definitions; however, since none of these definitions are revised by this amendment, the Director finds that these comments are outside the scope of this rulemaking.

Public Comments

1. The Powder River Basin Resources Council (PRBRC) questions the requirement that habitats be present in minimum amounts to be considered "critical habitat", stating that habitat can be critical for a population without being present in minimum amounts.

The Director does not agree. Habitats must be present to the minimum extent necessary to maintain the species of concern before it can be considered as critical habitat for that species. In addition, the Fish and Wildlife Service has concurred with the proposed definition.

2. The PRBRC states that the definition of "essential hydrologic functions" is not in accordance with congressional intent insofar as it limits consideration to water that is usefully available.

Since the corresponding Federal definition at 30 CFR 701.5 contains similar language, the Director cannot require that Wyoming adopt a more stringent definition. Also, with respect to mining on alluvial valley floors, the State must consider the usefulness and availability of any water present for agricultural activities when making its determinations as to permit application needs under Chapters III and XIII. Since in all cases, including those where agricultural activities do not currently exist, the general provisions of W. S. 35-11-415(b) protecting the hydrologic balance (including the preservation of essential hydrologic functions) still apply, the Director cannot concur with the PRBRC's assertion that the revised definition would create the potential to undermine the protection afforded to alluvial valley floors.

3. The PRBRC maintains that addition of the word "significant" to the definition of "material damage to the hydrologic balance" would allow random application of this definition. The Director cannot concur. As discussed in Finding 5, the terms "material" and "significant' are synonymous in this context and in common usage.

4. The PRBRC comments that the revised definition of "materially damage the quantity or quality of water" substitutes an economic test for a geologic or hydrologic one. SMCRA and the Federal regulations provide that determinations and restrictions on mining alluvial valley floors shall be based on the effect that mining would have on agricultural activities and farming, a decision that involves economic considerations as well as, but not exclusive of, geologic and hydrologic conditions. As discussed in Finding 6, the revised State definition is no less effective than the Federal definition of this term at 30 CFR 701.5.

5. The PRBRC contends that the definition of "subirrigation or flood irrigation agricultural activities" is seriously defective in that it includes only successful ventures. The Director does not agree. The revised State definition requires only the successful *production* of animal or vegetable life,

not that the operation be an economic success. Furthermore, as discussed in Finding 7, Wyoming has clarified that poor management or changing economic conditions will not be considered when determining success.

The PRBRC contends that this definition would permit mining on alluvial valley floors lacking current agricultural activities. The Director finds that such mining would not be inconsistent with the Federal regulations or section 515(b)(10)(F) of SMCRA so long as the essential hydrologic functions of the alluvial valley floor are preserved.

The PRBRC objects to the inclusion of the phrase "regional agricultural practices" in this definition in the absence of a definition of this phrase. The corresponding Federal definition of "agricultural activities" at 30 CFR 701.5 contains the same phrase in undefined form. The Director cannot require that Wyoming adopt regulations more stringent than the Federal rules. The regional concept is intended to protect both practices of unique local importance and locally important agricultural production of little significance on a larger scale. The Wyoming definition would require that the same type of agricultural production be protected.

6. The PRBRC does not agree with the deletion of any consideration of the impact of coal exploration on air resources when determining whether an activity qualifies as a substantial disturbance, citing blasting and topsoil removal as two activities that could degrade air quality. OSM removed air resources from its definition in response to a court ruling (*In re: Permanent Surface Mining Regulation Litigation*, CA 79–1144, D.D.C., May 16, 1980) that OSM jurisdiction over air quality was limited to those impacts resulting from erosion; the Director cannot require that Wyoming adopt more stringent rules. Furthermore, blasting or topsoil removal to the degree necessary to significantly impact air quality would almost certainly involve significant impacts on land resources and would thus be regulated as a substantial disturbance.

The PRBRC states that Wyoming has incorrectly punctuated the definition of "substantially disturb" and that it could thus be misinterpreted. The Director finds that Wyoming has placed all commas and semicolons in a gramatically proper fashion, thus avoiding any interpretation difficulties.

The PRBRC also does not agree with the deletion of the drilling or alteration of water wells from the list of activities constituting a substantial disturbance. Wyoming has deleted this specific reference so as to avoid any appearance of usurping the authority of the State Engineer in water-related matters. The phrase "other such activities" would still include water wells if they cause a significant impact on land or water resources. In addition, all drilling holes (including wells) must meet the reclamation requirements of W.S. 35–11–404.

7. The PRBRC comments that the revised definition of "undeveloped rangeland" does not consider the potential of such land for future production. The comment is correct; however the Wyoming regulation is more stringent than the Federal definition in that it considers both past and present production. The Federal definition is concerned only with current management. The Director cannot require that Wyoming adopt a more stringent rule. The question of what constitutes successful production has already been discussed in Comment 5.

8. The PRBRC states that the revised definition of "valid existing rights" could recognize such rights for coal neither owned nor controlled by the company prior to the enactment of SMCRA. Since the Director is deferring action on this portion of the amendment, he is not now addressing this comment.

9. The PRBRC objects to the inclusion in Chapter XIII, section 1(a)(i) of a reference to the preapplication determination procedures of Chapter III, section 2.a. when the amendment to the referenced section providing for preapplication determinations has not yet been approved. While the Director recognizes that the referenced procedures have not yet been approved, he finds that approving the reference itself will not render the Wyoming program less effective than SMCRA and the Federal regulations, since Wyoming cannot implement the referenced procedures until they are approved in a subsequent amendment.

The PRBRC also states that the preapplication determination procedures would not provide adequate public input. The Director disagrees, since Chapter XIII, section 1(a)(i) provides that any preapplication determination shall be included in the permit application and shall be available for public notice, opportunity for comment and conference and hearing.

10. The PRBRC states that the addition of section 2(d)(iii)(A), which provides for separate bonding of isolated portions of the permit area in need of extended liability, to Chapter XIII conflicts with the decision of the U.S. District Court for the District of Columbia in *In re: Permanent Surface Mining Regulation Litigation II* (October 1, 1984) requiring that bond be posted for the entire area to be mined within an initial permit term.

The Director does not concur with this assessment since the court did not remand 30 CFR 800.13(b), which provides for such bonding, to the Secretary for reconsideration. The extended bonding provisions do not govern the amount of bond that must be posted initially; they apply only at the time the remainder of the permit area qualifies for bond release.

V. Director's Decision

The Director, based on the above findings, is approving the proposed amendment to the Wyoming program, as submitted on September 21, 1984 and modified on June 11, 1985, with two exceptions. As discussed in Finding 11, he is deferring action on the revised definition of "valid existing rights" at Chapter I, section 2 (fffff), and, as discussed in Finding 13b, he is not approving the deletion of protection for privately owned sites on the National Register of Historic Places at Chapter XIII, section 1(a)(v)(C).

The Director is amending Part 950 of 30 CFR Chapter VII to implement this decision.

VI. Procedural Requirements

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exception from sections 3, 4, 7 and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a regulatory impact analysis and regulatory review by OMB.

The Department of the Interior has determined that the rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by

the Office of Managment and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 950

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: November 20, 1985.

James W. Workman,

Deputy Director, Office of Surface Mining.

PART 950—WYOMING

30 CFR Part 950 is amended as follows:

1. The authority citation for Part 950 continues to read as follows:

Authority: Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

2. 30 CFR 950.10 is revised to read as follows:

§ 950.10 State regulatory program approval.

The Wyoming permanent program, as submitted on August 15, 1979, and as revised on October 23, 1979, May 30, 1980, and August 5, 1980, is approved effective November 26, 1980. Copies of the approved program are available at:

(a) Office of Surface Mining Reclamation and Enforcement, Casper Field Office, Federal Building, 100 East "B" Street, Room 2128, Casper, Wyoming 82601–1918, Telephone: (307) 328–5824.

(b) Office of Surface Mining Reclamation and Enforcement, Administrative Record, 1100 "L" Street, NW., Room 5124, Washington, DC 20240, Telephone: (202) 343–4855.

(c) Wyoming Department of Environmental Quality, Land Quality Division, Herschler Building, 122 West 25th Street, Cheyenne, Wyoming 82002, Telephone: (307) 777–7756.

§ 950.15 [Amended]

3. 30 CFR 950.15 is amended by adding a new paragraph (e) to read as follows:

* * * * *

(e) The following amendment, as submitted to OSM on September 21, 1984 and revised on June 11, 1985, is approved, with the exception of the definition of "valid existing rights" at Chapter I, section 2(fffff) and the revision to Chapter XIII, section 1(a)(v)(C) concerning the protection of sites listed on the National Register of Historic Places, effective December 3, 1985: Modifications to certain definitions in Section 2 of Chapter I of the Rules and Regulations of the Land Quality Division (LQD) of the Wyoming Department of Environmental Quality, modifications to the permitting, bonding and insurance procedures and requirements of Chapter XIII of the LQD regulations, and the recodification of Chapters I and XIII of the LQD regulations.

The portion of Chapter XIII, section 1(a)(v)(C) not approved is italicized as follows:

(C) On any lands which will adversely affect any publicly owned park or *any publicly owned* places included in the National Register of Historic Places, unless jointly approved by the administrator and the Federal, State or local agency with jurisdiction over the park or place.

[FR Doc. 85–28683 Filed 12–2–85; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD13 85–17]

Drawbridge Requirements; Lake Washington Ship Canal, Seattle, WA

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule with request for comments.

SUMMARY: The Coast Guard is temporarily changing the regulations for operation of the City of Seattle's drawbridges across the Lake Washington Ship Canal. The change will permit the bridges to remain in the closed position, after receiving an opening request, for periods of up to ten minutes, if needed to pass accumulated vehicular traffic. Bridges to which this temporary change applies are the: Ballard (15th Avenue) Bridge, Fremont Avenue Bridge, University Bridge, and Montlake Bridge. This change is being made to evaluate its effect in relieving vehicular traffic congestion.

DATES: These temporary regulations are effective on November 20, 1985 and terminate on January 18, 1986. Comments must be received on or before January 31, 1986.

ADDRESS: Comments should be mailed to Commander (oan), Thirteenth Coast Guard District, 915 Second Avenue, Seattle, Washington 98174–1067. The comments and other materials referenced in this notice will be available for inspection and copying at 915 Second Avenue, Room 3564. Normal office hours are between 7:45 a.m. and 4:15 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: John E. Mikesell, Chief, Bridge Section, Aids to Navigation Branch, (Telephone: (206) 442–5864).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking (NPRM) was not published for these regulations and they are being made effective in less than 30 days after **Federal Register** publication. Following normal rulemaking procedures would be impracticable. Implementation of these temporary regulations is necessary to allow time to evaluate their effect and to make changes, if necessary, before onset of the next boating season. Persons affected or concerned with these temporary regulations are invited to comment on their feasibility and impact on both marine and vehicular traffic, including observed effects and any suggestions for changes. We are especially interested in alternate ideas for reducing traffic congestion, such as scheduled openings. For example: openings on the hour, 15 minutes after the hour, 30 minutes after the hour, and 45 minutes after the hour, or any other combination which would serve the needs of both vessel and vehicular traffic. Persons submitting comments should include their names and addresses, identify the bridges, and give reasons for support or opposition to these temporary regulations. Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed postcard or envelope. If a determination is made to permanently change the regulations, a notice of proposed rulemaking will be published to afford the public further opportunity for comment at that time.

Drafting Information

The drafters of this notice are: John E. Mikesell, project officer, and Lieutenant Commander Judith M. Hammond, project attorney.

Discussion of the Temporary Regulations

Bridges across the Lake Washington Ship Canal are among the most frequently opened of any in the United States. Repeated opening of these drawbridges results in significant local traffic congestion. We believe that limiting the number of bridge openings will improve traffic conditions and still provide for the reasonable needs of navigation. This temporary regulation will enable us to evaluate the effectiveness of reducing the frequency of operation by allowing up to ten minutes to elapse before opening the drawspan after receiving an opening request. This change will not affect provisions of the existing regulations which authorize closed periods and advance notice.

List of Subjects in 33 CFR Part 117

Bridges.

Temporary Regulations

PART 117—DRAWBRIDGE REQUIREMENTS

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations is temporarily amended as follows:

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46(c)(5) and 33 CFR 1.05-1(g).

2. Section 117.1051(d) is changed to read as follows for the period November 20, 1985 through January 18, 1986. Because this is a temporary rule, this change will not appear in the Code of Federal Regulations.

§ 117.1051 Lake Washington Ship Canal.

* * * * *

(d) The draws of the Ballard (15th Avenue) Bridge, mile 1.1, Fremont Avenue Bridge, mile 2.6, University Bridge, mile 4.3, and Montlake Bridge, mile 5.2, shall open on signal, except that:

(1) The draws need not be opened for a period of up to 10 minutes after receiving an opening request, if needed to pass accumulated vehicular traffic.

(2) The draws need not open from 7 a.m. to 9 a.m. and 4 p.m. to 6 p.m. Monday through Friday, except Federal holidays for vessels of less than 1,000 tons, unless the vessel has in tow a vessel of over 1,000 tons, except under emergency conditions when the Seattle City Engineer is notified.

(3) Between the hours of 11 p.m. and 7 a.m. the draws shall open if at least one hour notice is given by telephone, radiotelephone, or otherwise to the drawtender at the Fremont Avenue Bridge.

Dated Nov. 20, 1985.

H.W. Parker,

Rear Admiral, U.S. Coast Guard, Commander, 13th Coast Guard District.

[FR Doc. 85-28714 Filed 12-2-85; 8:45 am]

BILLING CODE 4910-14-M

COPYRIGHT ROYALTY TRIBUNAL

37 CFR Part 304

[Reg. No. 6-10046]

Cost of Living Adjustment for Performance of Musical Compositions by Public Broadcasting Entities Licensed to Colleges and Universities

AGENCY: Copyright Royalty Tribunal.

ACTION: Final rule.

SUMMARY: In accordance with 37 CFR 304.10(a) the Copyright Royalty Tribunal announces a cost of living adjustment of 3.1%. This adjustment is to be applied to the compulsory royalty rates paid by public broadcasting entities which are licensed to colleges, universities or other nonprofit educational institutions and which are not affiliated with National Public Radio, for their use of copyrighted published nondramatic musical compositions. In accordance with 37 CFR 304.10(b) the Copyright Royalty Tribunal publishes a revised schedule of rates as adjusted by the above change in the cost of living index.

EFFECTIVE DATE: January 2, 1986.

FOR FURTHER INFORMATION CONTACT: Edward W. Ray, Acting Chairman, Copyright Royalty Tribunal, 1111 20th Street, NW., Washington, DC 20036, 202-653-5175.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of December 29, 1982 (47 FR 57923) codified at 37 CFR 304.10, the Copyright Royalty Tribunal published a final rule announcing the adjustment of the royalty schedule for the use of certain copyrighted works in connection with non-commercial broadcasting.

Section 304.10 Cost of living adjustment.

(a) On December 1, 1983 the CRT shall publish in the **Federal Register** a notice of the change in the cost of living as determined by the Consumer Price Index (all urban consumers, all items) from the May 1982 to the last Index published prior to December 1, 1983. On each December 1 thereafter the CRT shall publish a notice of the change in the cost of living during the period from the first Index published subsequent to the previous notice, to the last index published prior to December 1 of that year.

(b) On the same date of the notices published pursuant to paragraph (a), the CRT shall publish in the **Federal Register** a revised schedule of rates for § 304.5 alone, which shall adjust those royalty amounts established in dollar amounts according to the change in the cost of living determined as provided in paragraph (a) of this section. Such royalty rates shall be fixed at the nearest dollar.

(c) The adjusted schedule of rates for § 304.5 alone, shall become effective thirty days after publication in the **Federal Register**.

List of Subjects in 37 CFR Part 304

Copyrights, Radio, Television.

Accordingly, it is announced that the change in the cost of living as determined by the Consumer Price Index, is revised as shown below:

PART 304—[AMENDED]

1. The authority citation for Part 304 is revised to read as follows:

Authority: 17 U.S.C. 118 and 801 (1976).

2. 37 CFR Part 304.5(c) is amended by revising the schedule of roylaty rates to read as follows:

§ 304.5 [Amended].

* * * * *

(c) * * *

For all such compositions in the repertory of ASCAP anually, $150.

For all such compositions in the repertory of BMI annually, $150.

For all such compositions in the repertory of SESAC annually, $35.

For the performances of any other such composition, $1.

* * * * *

Dated: November 26, 1985.

Edward W. Ray,

Acting Chairman.

[FR Doc. 85-28528 Filed 12-2-85; 8:45 am]

BILLING CODE 1410-09-M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101-40

[FPMR Temp. Reg. A-23, Supp. 2]

Use of Carrier Contractors for Express Small Package Transportation

AGENCY: Office of Federal Supply and Services, GSA.

ACTION: Temporary regulation.

SUMMARY: This supplement amends FPMR Temp. Reg. A-23 by extending the expiration date from September 30, 1985, to September 30, 1986. It also amends the heading of attachment B to read "Transportation and Travel Services" instead of "Transportation Services Branch." Furthermore, this supplement incorporates a new contract provision that authorizes the contractor to suspend service to activities whose account(s) for undisputed amounts are in arrears by more than 90 calendar days from the contractor's invoice date. Supplements 1 and 2 contain changes to the basic regulation, which became effective October 1, 1983.

DATE: Effective date: October 1, 1985.

Expiration date: September 30, 1986, unless sooner canceled or revised.

FOR FURTHER INFORMATION CONTACT: Charles T. Angelo, Director, Travel and

Transportation Services Division (FTS–557–1261/(703)557–1261).

SUPPLEMENTARY INFORMATION: GSA has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more, a major increase in costs to consumers or others, or significant adverse effects. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

List of Subjects in 41 CFR Part 101–40

Freight, Government property management, Moving of household goods, Office relocations, Transportation.

(Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c)).

In 41 CFR Chapter 101, the following temporary regulation is added to the appendix at the end of Subchapter A to read as follows:

T.C. Golden,

Administrator of General Services.

November 4, 1985.

Federal Property Management Regulations, Temporary Regulation A–23 Supplement 2

To: Heads of Federal agencies.

Subject: Use of carrier contractor for express small package transportation.

1. *Purpose.* This supplement amends FPMR Temp. Reg. A–23 by extending the expiration date from September 30, 1985, to September 30, 1986. It also amends the heading of attachment B to read: "Transportation and Travel Services" instead of "Transportation Services Branch." Furthermore, this sepplement incorporates a new contract provision that authorizes the contractor to suspend service to activities whose account(s) for undisputed amounts are in arrears by more than 90 calendar days from the contractor's invoice date. Supplements 1 and 2 contain all chages to the basic regulation, which became effective October 1, 1983.

2. *Effective date.* This regulation is effective October 1, 1985.

3. *Expiration date.* This regulation expires September 30, 1986, unless sooner canceled or revised.

4. *Explantation of changes.*

a. Par. 9 is redesignated as 9a and is revised to read as follows:

"9a. *Payment responsibilities.* In accordance with the terms of the contract, payments to the contractor will be due on the 30th calendar day after the date of actual receipt of a proper invoice. The contractor is authorized to suspend service to an account to the extent that undisputed amounts are overdue more than 90 calendar days from the invoice date in accordance with subpar. b, below. The date of the check issued in payment or the date of payment by wire transfer through the Treasury Financial Communications System shall be considered to be the date payment is made. The Prompt Payment Act (Pub. L. 97–177, 31 U.S.C. 3902, May 21, 1982) provides for the assessment of interest penalties when payments are overdue. A claim for reimbursement of paid transportation charges shall be filed against the contractor when it is determined that the contractor failed to furnish next day delivery as provided in subpar. 8a.

"a. GSA has determined that the contractor's invoice form meets the requirements of 41 CFR 101–41.304–2(d)(2) regarding payment of charges and is a proper invoice for payment and for the purposes of implementing the Prompt Payment Act. Accordingly, agencies should establish simplified procedures to ensure prompt payment to the contractor. If agencies do not have an effective payment system to achieve this purpose, they should consider requiring the shipper and/or consignee to forward a copy of the contractor's airbill to the appropriate paying office for payment or reconciliation.

"b. Agencies shall instruct their cost-reimbursable contractors shipping under this regulation to ensure that the commercial document bears a proper "bill to" address and appropriate account reference(s) to facilitate the prompt processing and payment of the contractor's invoice by the due date."

b. Par. 9b is added and reads as follows:

"9b. *Suspension of services.*

"a. Service to any delinquent agency account may be suspended to the extent that undisputed amounts are overdue more than 90 calendar days provided the contractor has simultaneously notified the account holder and the appropriate GSA regional office 60 calendar days after the invoice date that amounts are overdue and need to be paid within 30 calendar days of the date of the delinquency notice. The GSA regional office will also send a letter to the delinquent agency account within 5 calendar days of receipt of the 60-day notice from the contractor.

"b. Disputes concerning the proper amount of charges for services rendered (e.g., improper billing, failure to post payments, erroneous charges, etc.) shall be referred for review to the contractor's billing office, with a copy to the appropriate GSA regional office, within 15 calendar days of receipt of the invoice, as required by 31 U.S.C. 3903(5) and OMB Circular A–125, Sec. 6.b., which implement the statute.

"c. No suspension of service will be initiated where such disputes exist if an activity has paid the balance of undisputed billings.

"d. Any suspension will be taken only against the activity to which the account number is assigned, not against the entire agency.

"e. Service shall be restored within 5 calendar days of payment of the overdue amounts.

"c. Make the following pen and ink changes to attachment B: Change the third line of the heading to read 'Transportation and Travel Services' instead of 'Transportation Services Branch.'"

[FR Doc. 85–28626 Filed 12–2–85; 8:45 am]

BILLING CODE 6820–24–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

45 CFR Part 96

Low Income Home Energy Assistance; Announcement of FY 1986 State Median Income

AGENCY: Social Security Administration, HHS.

ACTION: Rules related notice.

SUMMARY: This notice announces the median income for four-person households for each State and the District of Columbia for fiscal year (FY) 1986. This listing of median income concerns maximum income for households to which the States may make home energy assistance payments.

FOR FURTHER INFORMATION CONTACT: Barbara Levering (202) 245–2637.

SUPPLEMENTARY INFORMATION: Under the provisions of section 2603(7) of title XXVI of the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35), we are announcing the median income of a four-person household for each State, for the District of Columbia, and for the 50 States and the District of Columbia for the period October 1, 1985 through September 30, 1986. The purpose of this announcement is to provide information on one of the income criteria for eligibility under the Low Income Home Energy Assistance Program (LIHEAP). Section

2605(b)(2)(B)(ii) of Pub. L. 97–35 provides that 60 percent of the median income for each State, as annually established by the Secretary of Health and Human Services, is one of the income eligibility criteria under LIHEAP.

The Low Income Home Energy Assistance Program is currently authorized through the end of FY 1986 by provisions of title VI of the Human Services Reauthorization Act, Pub. L. 98–558, enacted on October 30, 1984. Under this enacted legislation, the current income eligibility provisions relating to median income remain unchanged.

Estimates of the median income of four-person households for each State and the District of Columbia for FY 1986 were developed by the Bureau of the Census. In developing the median incomes, the Bureau of the Census used the following three sources of data: (1) The March 1984 Current Population Survey; (2) the 1980 Census of Population; and (3) per capita income estimates from the Bureau of Economic Analysis. Our method for adjusting median income for households of different sizes is specified in 45 CFR 96.85, (which was published in the **Federal Register** on July 2, 1984 at 49 FR 27145).

A State-by-State listing of median income, and 60 percent of median income, for a four-person household for FY 1986 is attached.

Dated: November 20, 1985.

Martha A. McSteen,

Acting Commissioner of Social Security.

MEDIAN INCOME FOR FOUR-PERSON HOUSEHOLDS: FISCAL YEAR 1986

State	Median income[1]	60 percent of median income[2]
Alabama	$25,117	$15,070
Alaska	36,238	22,943
Arizona	27,551	16,531
Arkansas	21,524	12,914
California	31,967	19,180
Colorado	32,294	19,376
Connecticut	37,703	22,622
Delaware	31,676	19,006
Dist. of Col	28,701	17,221
Florida	25,455	15,273
Georgia	27,463	16,478
Hawaii	31,614	18,968
Idaho	24,009	14,405
Illinois	30,736	18,442
Indiana	26,924	16,154
Iowa	25,800	15,480
Kansas	27,569	16,541
Kentucky	24,096	14,458
Louisiana	27,953	16,772
Maine	24,178	14,507
Maryland	35,475	21,285
Massachusetts	33,990	20,394
Michigan	29,472	17,683
Minnesota	30,785	18,471
Mississippi	21,957	13,174
Missouri	27,789	16,673
Montana	25,278	15,167
Nebraska	26,100	15,660

MEDIAN INCOME FOR FOUR-PERSON HOUSEHOLDS: FISCAL YEAR 1986—Continued

State	Median income[1]	60 percent of median income[2]
Nevada	34,504	20,702
New Hampshire	30,414	18,248
New Jersey	36,448	21,869
New Mexico	23,906	14,344
New York	30,539	18,323
North Carolina	25,363	15,218
North Dakota	26,327	15,796
Ohio	28,305	16,983
Oklahoma	27,169	16,301
Oregon	26,404	15,842
Pennsylvania	28,274	16,964
Rhode Island	29,167	17,500
South Carolina	25,756	15,454
South Dakota	23,998	14,399
Tennessee	24,081	14,449
Texas	29,290	17,574
Utah	25,678	15,407
Vermont	25,441	15,265
Virginia	31,451	18,871
Washington	30,185	18,111
West Virginia	22,153	13,292
Wisconsin	28,979	17,387
Wyoming	28,480	17,088

NOTE.—The median income for a four-person household in the 50 States and the District of Columbia applicable to the period October 1, 1985 through September 30, 1986 is $29,184.

[1] Development by the Bureau of the Census from the March 1984 Current Population Survey, 1980 Census of Population, and per capita income estimates from the Bureau of Economic Analysis.

[2] Prepared by the Social Security Administration, Office of Family Assistance.

[FR Doc. 85–28704 Filed 12–2–85; 8:45 am]

BILLING CODE 4190–11–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 83–1000; RM–4577]

TV Broadcast Station in Battle Creek, MI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein denies a petition for reconsideration filed by the University of Michigan, of our previous action imposing a site restriction on UHF Television Channel *58 at Ann Arbor, Michigan.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Memorandum Opinion and Order (Proceeding Terminated)

In the Matter of Amendment of § 73.606(b), Table of Assignments, TV Broadcast Stations. (Battle Creek, Michigan); MM Docket No. 83–1000, RM–4577.

Adopted: November 15, 1985.

Released: November 26, 1985.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration the Petition for Reconsideration, filed by the University of Michigan ("UM"), of the *Report and Order*, 49 FR 45586, published November 19, 1984. The *Report and Order* allocated UHF Television Channel 43 to Battle Creek, Michigan, and imposed a site restriction of 3 miles east on vacant UHF Television Channel *58 at Ann Arbor, Michigan. Wolverine Broadcasting Company ("Wolverine"), the original petitioner for Battle Creek, did not file comments to the petition for reconsideration.

2. The University of Michigan opposes the three mile site restriction imposed on Channel *58 at Ann Arbor. It asserts that the *Notice* in this proceeding failed to give mention of a proposal to impose a three-mile east site restriction on Channel *58. Instead, the *Notice* proposed to site restrict the proposed assignment of UHF Channel 43 to Battle Creek, Michigan, by 25.3 miles, so as to prevent short spacings to Stations WSJV–TV (Channel 28), Elkhart, Indiana; WUHQ–TV (Channel 41) Battle Creek; and vacant Channel *58 in Ann Arbor.

3. The University argues that the full burden of any necessary restriction resulting from the new allocation at Battle Creek should be imposed on the Battle Creek allocation and not on Channel *58 at Ann Arbor. In this regard, UM alleges that the site restriction on Channel *58 would deprive a future licensee of the opportunity to co-locate at the towers of the only other television station allocated to Ann Arbor (WIHT–TV, Channel 31) or at the site of the University's radio station WUOM(FM), both of which are located to the west of Ann Arbor. The site restriction also may involve aeronautical considerations, making it impossible to secure FAA approval for a tower structure exceeding about 350 feet AGL. Authough the University of Michigan has not yet applied to construct a television facility in Ann Arbor on Channel *58, it states that it anticipates doing so.

4. As for UM's assertion that it had no opportunity to oppose the site restriction on channel *58 at Ann Arbor, this issue was raised in the initial comments by

Wolverine. UM could have argued its position in reply comments. However, we may now consider its objection in the present context of this case.

5. At present, four applications [1] are on file for UHF Television Channel 43 at Battle Creek, Michigan. None of these comply with the 25.3 mile site restriction. Additional staff study failed to find alternative channels available for allocation at either community. The University of Michigan has not yet filed an application for Channel *58. The *Report and Order* chose a three-mile site restriction at Ann Arbor over a 25-mile restriction at Battle Creek primarily because the most effective utilization of each channel dictates that the transmitter should be located as close to the community as possible. At this time, we can only consider UM's interest as speculative with regard to its site preference. Other interested parties may file for the Ann Arbor channel without the same concerns for site location. Therefore, we feel that it would be appropriate to deny petitioner's request to reconsider the site restriction imposed on vacant UMF Television Channel *58 at Ann Arbor in the *Report and Order*.

6. Accordingly, Is is ordered, That the petition for reconsideration filed by the University of Michigan, is denied.

7. It is further ordered, that this proceeding is terminated.

8. For further information concerning the above, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 85–28718 Filed 12–2–85; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 87

[FCC–85–619]

Amendment of the Rules to Reflect Minor Changes to the Plan for the Security Control of Air Traffic and Air Navigation Aids (SCATANA).

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document makes minor changes in the rules to reflect recent amendments to the existing Security Control of Air Traffic and Air Navigation Aids (SCATANA). This action deletes VORTAC and TACAN air navigation systems and adds ILS (Instrument Landing Systems), MLS (Microwave Landing Systems), and low frequency and medium frequency non-directional beacons to the list of non-Government air navigation stations which may be subject to Government control when SCATANA is implemented. The intended effect is to have the rules reflect the current SCATANA Plan.

EFFECTIVE DATE: January 2, 1986.

FOR FURTHER INFORMATION CONTACT:

Maureen Cesaitis, Private Radio Bureau, (202) 632–7175.

SUPPLEMENTARY INFORMATION: .

List of Subjects in 47 CFR Part 87

Civil defense, Defense communications.

Order

In the matter of amendment of Part 87 of the rules to reflect changes made to the Plan for the Security Control of Air Traffic and Air Navigation Aids, FCC 85–619.

Adopted: November 20, 1985.
Released: November 26, 1985.

By the Commission.

1. The Plan for the Security Control of Air Traffic and Air Navigation Aids (SCATANA) is an inter-agency agreement signed by the Federal Aviation Administration (FAA), the Department of Defense (DoD), and the Federal Communications Commission (FCC). The Plan provides DoD authority, through the FAA, to control the operation of air navigation aids in the event of an air defense emergency. This is intended to enhance the use of U.S. airspace for defense and defense supported activities. SCATANA is being revised and updated. The new plan makes minor changes and supersedes the 1975 one.

2. Part 87 (Aviation Services) of the FCC's rules contains certain provisions of SCATANA, including an FCC Support Plan for the Security Control of non-Federal Air Navigation Aids. In order to update Part 87 so that it reflects the changes made to the SCATANA Plan, we are adding ILS (Instrument Landing Systems), MLS (Microwave Landing Systems) and low frequency and medium frequency non-directional beacons to the list of non-Federal air navigation aids which are subject to control by military authorities in a national emergency. Additionally, we are deleting the reference to VORTAC (very high frequency Omnirange/Tactical Air Navigation) and TACAN (Tactical Air Navigation) systems since there are no non-Federal stations of this type.

3. For the reasons described above, we are amending the rules to add ILS, MLS and LF/MF non-directional beacons and to delete VORTAC and TACAN. Authority for this action is contained in sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r). Since this amendment involves a military function of the United States, we find good cause to dispense with the public notice and comment procedures of the Administrative Procedure Act, 5 U.S.C. 553(a)(1).

4. Accordingly, it is ordered, That Part 87 of the Commission's rules is amended as set forth in the attached Appendix effective January 2, 1986.

5. For further information regarding matters covered in this document, contact Maureen Cesaitis at (202) 632–7175.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

Part 87 of Chapter 1 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 87—AVIATION SERVICES

1. The authority citation for Part 87 continues to read as follows:

Authority: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–156, 301–609.

2. Section 87.601 is amended by revising paragraph (b) to read as follows:

§ 87.601 Scope and objective.

* * * * *

(b) Sections 87.606 and 87.607 provide for continued radio service and operation of facilities to the extent necessary for the safety or control of friendly aircraft during emergency situations. It also provides for actions to be taken under the Plan for the Security Control of Air Traffic and Air Navigation Aids (Short Title: SCATANA) and the FCC Support Plan for the Security Control of Non-Federal Air Navigation Aids to effect control of selected non-Federal VOR/DME, ILS, MLS, LF and MF non-directional beacon stations by appropriate military authorities during emergency situations resulting in the declaration of an Air Defense Emergency and/or Defense Emergency or imminence thereof.

* * * * *

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[1] Thompson Broadcasting of Battle Creek, Inc. (BPCT 850416KC), Polaris Television Limited (BPCT 850607KE), United States Broadcasting Corp. (BPCT850607KF) and Margaret Miller (BPCT 850607KN).

3. Section 87.602 is amended by revising paragraphs (a), (f) and (j) to read as follows:

§ 87.602 Definitions of terms.

(a) Accurate Air Navigation Aids. Radio navigation stations in the following categories: Very High Frequency Omnidirectional Range/Distance Measuring Equipment (VOR/DME), Instrument Landing Systems (ILS), Microwave Landing Systems (MLS) and low frequency (LF) and medium frequency (MF) non-directional beacons.

* * * * *

(f) FCC Support Plan for the Security Control of Non-Federal Air Navigation Aids. A plan to establish the responsibilities, procedures, and general instructions for the security control of selected non-Federal VOR/DME, ILS, MLS, LF and MF non-directional beacon stations under the provisions of the SCATANA Plan, during a Defense Emergency and/or Air Defense Emergency or imminence thereof.

* * * * *

(j) Non-Federal Air Navigation Aids. VOR/DME, ILS, MLS, LF and MF non-directional beacon stations licensed by the Federal Communications Commission.

* * * * *

4. Section 87.606 is amended by revising paragraphs (a), (b)(2) introductory text, and (b)(2)(i) to read as follows:

§ 87.606 Plan for the Security Control of Air Traffic and Air Navigation Aids (Short Title: SCATANA).

(a) The Plan for the Security Control of Air Traffic and Air Navigation Aids (SCATANA) has been promulgated in furtherance of the Federal Aviation Act of 1958, as amended, the Communications Act of 1934, as amended, and Executive Order 11490, as amended. SCATANA defines the responsibilities of the FCC for the security control of accurate non-Federal air navigation aids.

(b) * * *

(2) As directed by the appropriate military authority, FAA ARTCC's will disseminate SCATANA implementation instructions, to be complied with by all licensees of accurate air navigation (VOR/DME, ILS, MLS, LF and MF non-directional beacons) stations, as follows:

(i) Shut down the above navigation aids in accordance with the appropriate military authority instructions. These instructions will permit time to land/disperse airborne aircraft, and will provide for the extension of such times when the air traffic situation dictates.

* * * * *

[FR Doc. 85-28642 Filed 12-2-85; 8:45 am]
BILLING CODE 6712-01-M

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47 CFR Part 97

[PR Docket No. 85-51; FCC 85-618]

Amendment of the Amateur Rules To Prohibit Disqualified Persons From Participating in Third Party Communications

AGENCY: Federal Communications Commission.

ACTION: Final rules.

SUMMARY: This document amends the Amateur Radio Service Rules by prohibiting former amateur licensees against whom enforcement sanctions have been imposed from participating in third-party communications. The rule is necessary so that disqualified persons cannot nullify amateur license revocations or suspensions. The effect of the rule is to preclude former licensees from circumventing enforcement sanctions which have been imposed against them.

EFFECTIVE DATE: January 24, 1986.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR INFORMATION CONTACT: Maurice J. DePont, Private Radio Bureau, Washington, D.C. 20554, (202) 632-4964.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 97

Amateur radio, Radio, Penalties.

Report and Order

In the matter of amendment of § 97-114 of the Amateur Radio Service Rules to prohibit disqualified persons from participating in third-party communications; FCC 85-618, PR Docket No. 85-51.

Adopted: November 20, 1985.
Released: November 26, 1985.

By the Commission.

1. On February 22, 1985, the Commission adopted a Notice of Proposed Rule Making (50 FR 10087; March 13, 1985) to prohibit persons whose licenses have been revoked or suspended from participating in third-party communications. Thirteen comments were filed in this proceeding.

2. A majority of the comments favor the Commission's proposal. Some commenters suggest various modifications to the proposed rules which are discussed below. The opponents to the proposal saw it as inhibiting the rehabilitation process that a former licensee needs to work through in order to be relicensed.

3. Daniel Murph, Jr. states that our proposal would bar from third-party participation any persons who had voluntarily surrendered an amateur license for cancellation, without a sanction being a factor. This is not the case since our proposal includes only those situations where the amateur license was surrendered for cancellation following notice of revocation, suspension or monetary forfeiture. Likewise, the concerns expressed by George and Carolyn Warren, relating to barring any individual from third-party participation because of license expiration, are not warranted since our proposal only disqualifies persons who have incurred sanctions.

4. John S. Papay argues that no rules should be adopted which would restrict former licensees from third-party participation. He said that participation in amateur radio as a third-party could be a positive factor in the rehabilitation process of that individual. We do not concur. Third-party participation is a privilege extended to persons who are not control operators. The rest of amateur radio need not continue to accommodate the conduct of one who has lost the privilege and who now may or may not be able to conform to the law.

5. Mr. Richard A. Golden opposes our proposed rule on three grounds. First, he contends that the proposed rule would, in effect, be a constitutionally prohibited *ex post facto* law as far as those whose licenses have already been terminated would be concerned. Second, he maintains that the proposed rule denies former licensees freedom of speech. Finally, Mr. Golden argues that the proposed rule would effectively censor existing Commission licensees in violation of their constitutional guarantee of due process. We find these arguments unpersuasive. While Mr. Golden does not explain why he considers this an *ex post facto* law, we assume he may be concerned that we are imposing additional sanctions upon former licensees. As we noted in the Notice, our intention is quite the contrary. We are only attempting to ensure that sanctions, properly imposed, are effective. *Notice of Proposed Rule Making, supra* at 10087, paragraph 3. In addition, the third-party rule was intended to be a convenience for non-licensees, such as overseas military personnel or victims of disaster; it permits them to have non-business messages sent for them without charge over amateur radio facilities. Such usage is necessarily occasional. Usage by

licensees with revoked or suspended licenses falls outside the rule's purposes, and some former licensees have attempted to use it as a means of continuing with their normal communications. This amendment precludes that possible circumvention. As for Mr. Golden's second argument, we simply observe that the Commission has the authority to establish who may be licensed. See 47 U.S.C. 301, 303. Reasonable rules that limit spectrum usage consistent with the nature of a particular radio service are similarly contemplated. See *Lafayette Radio Electronics Corp. v. United States*, 345 F.2d 278 (2d Cir. 1965). Accordingly, we think that it is well within our power to place reasonable limits on the usage of amateur stations by non-licensees to preserve the nature and purposes of that service. Moreover, as to the rights of present licensees in good standing, a license confers no "property right," and such licensees accept their licenses subject to the Commission's regulations. Those rules of course, are subject to amendment by rule making in which licensees may be heard. Under those circumstances, all procedural requirements have been met. See e.g., *United States v. Storer Broadcasting Co.*, 351 U.S. 192, 202–204 (1956); *WBEN, Inc. v. United States*, 396 F.2d 601, 618 (2d Cir. 1968).

6. The American Radio Relay League, Inc., (ARRL) strongly supports the Commission's proposal noting that without such a rule ". . . license revocation or suspension would have no significant punitive or deterrence value whatsoever." However, the ARRL observes that the deletion of § 97.79(d) leaves no express provision in the rules permitting third-party traffic and recommends that § 97.79(d) be retained. Although the permisibility of third-party traffic can be inferred from the provisions of § 97.114, the ARRL is correct that the deletion of paragraph (d) would leave the amateur rules without an explicit provision authorizing it. To remedy this, we will insert a new paragraph (a) in § 97–114 which will expressly permit third-party traffic.

7. The majority of the comments affirms our own conviction that the rules should contain express language prohibiting third-party participation by any disqualified person. Without such a provision, former licensees could continue, if permitted by a present licensee, to engage in amateur radio communications. These rule changes do not change present rule provisions pertaining to third-party traffic in general.

8. Among the comments was the suggestion that the proposal be expanded to include as disqualified persons all individuals whose licenses have been revoked in any radio service regulated by the Commission. A variation of this was the recommendation that a person should have all other FCC licenses revoked, if sanctions had been imposed concerning an amateur radio license. These suggestions involve broad policy consideration concerning licensee character qualifications in various radio services that we regulate. They are outside the scope of this proceeding.

9. Every amateur station must have a control operator when it is in operation. Only a licensed amateur operator may be the control operator of an amateur station. If the control operator is not the station licensee, the control operator must be a licensed amateur operator designated by the station licensee also to be responsible for the station's transmissions. See § 97.3(o). Only the control operator may make adjustments to the station transmitter. The station licensee may allow the station to transmit messages for third parties in certain instances. While transmitting such messages, the control operator may allow the third party to participate directly in stating the message, provided the control operator is present and continuously monitors and supervises the radiocommunications to assure compliance with the rules. While transmitting such messages, the control operator may allow the third party to perform limited nontechnical control operator duties associated with stating the message, i.e., speak into a station microphone, manipulate a station keyboard or telegraphy keyer, point a station television camera, etc. By "participating" in amateur communications as described above, the third party may seem to be the control operator. That is not the case. It is the licensed control operator, together with the station licensee, who bears the responsibility for the proper operation of the amateur station.

10. Although our discussion in the Notice of Proposed Rule Making addressed the matter of licensee responsibility when the licensee "knowingly" allows a disqualified person to participate in third-party communications, the proposed rule itself did not contain the word "knowingly." Comments from David Popkin and Otis Tucker, Jr. referred to this point. Mr. Tucker inquires as to what constitutes "knowingly."

He also inquires whether a licensee would have to ask each third-party whether sanctions had been imposed and what would happen if the third party denied any sanctions. Mr. Popkin suggests inserting the word "Knowingly" in the proposed rule. In his view, without such a qualifier, an amateur licensee could not allow participation in third party communications since the licensee could not know the status of the originator of the communication. Mr. Popkin believes that this is a problem where amateurs handle radiograms or control amateur repeaters. Mr. Papay also requests that the word "knowingly" be inserted in the rule.

11. Rules of conduct do not generally contain the word "knowingly". Sections 501 and 502 of the Communications Act of 1934, as amended, contain provisions setting forth the penalties for persons who "willfully and knowingly" violate the Act or the rules made pursuant thereto. Section 503 of the Act authorizes forfeitures against persons who "willfully or repeatedly" violate the Act or the rules, or who fail to comply with the terms of a license issued by this agency.[1] Since the standards by which a licensee will be judged for permitting a disqualified person to participate in amateur communications are already contained in the Communications Act, and since essential knowledge of the facts necessary to establish legal responsibility is determined by evidentiary means, it is not necessary to include the word "knowingly" in § 97.114 (c).

12. Mr. Popkin also suggests that we should characterize the third party as a prior amateur radio licensee rather than as a prior FCC licensee. The suggestion is well taken and the rules that we adopt will be modified accordingly. He recommends that we add the words "and has not be reinstated" in further explication of the fact that a person is disqualified as long as a suspension for less than the balance of the license term is in effect. We also adopt this suggestion and will reward the rule to read "suspensed for less than the

[1] To conclude that an act is done "knowlingly", the evidence must show that the act was done deliberately and with knowledge and not done merely carelessly, negligently or inadvertently. See, e.g., *Browder* v. *United States*, 312 U.S. 335, 341 (1941). See also *Midwest Radio-Television, Inc.* 45 FCC 1137, 1141 (1963), where the Commission held that "willfully" does not require a showing that the licensee know that he is acting wrongfully. It requires only that the person know that the act in question is being done, i.e., that the act is not accidental. In short, a violation occurs if a defendant knew what he was doing, that what he did was a violation of this chapter, and he intended to do what he did. See *United States* v. *Gris*, 247 F.2d 860, 864 (2d Cir. 1957); See also *United States* v. *Simpson*, 561 F.2d 53, 62 (7th Cir. 1977).

balance of the license term and the suspension is still in effect."

13. Mr. Popkin's final comment concerns that portion of § 97.114 which deals with prohibited third-party traffic involving material compensation. He requests that previous policy rulings concerning amateur transmission of public service communciations be included in the rule. The interpretive rulings in question delineate which public service communications are permissible to be sent over amateur radio facilities and which are not. This suggestion would needlessly burden our rules with specifics which vary according to the public service activity being conducted. Therefore, it is not adopted.

14. With the modifications discussed herein, we adopt the rules that were proposed in our Notice of Proposed Rule Making.

15. It is ordered, That Part 97 is amended as set forth in the Appendix hereto. This action is take pursuant to the authority contained in Sections 4 (i) and 303 (r) of the Communications Act of 1934, as amended.

16. It is further ordered, That these rule amendments shall become effective January 24, 1986.

17. It is further ordered, That the Secretary shall cause a copy of this Report and Order to be published in the Federal Register.

18. It is futher ordered, that this proceeding is terminated.

19. Information in this matter may be obtained by contacting Maurice J. DePont, (202) 632–4964, Private Radio Bureau, Federal Communications Commission, Washington, D.C. 20554.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

Part 97 of Chapter 1 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 97—[AMENDED]

1. The authority citation for Part 97 continues to read as follows:

Authority: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303.

§ 97.79 [Amended]

2. Section 97.97 is amended by removing paragraph (d).

3. Section 97.114 is revised to read as follows:

§ 97.114 Third-party traffic.

(a) Subject to the limitations specified in paragraphs (b) and (c) of this section, an amateur radio station may transmit third-party traffic.

(b) The transmission or delivery of the following third-party traffic is prohibited:

(1) International third-party traffic except with countries which have assented thereto;

(2) Third-part traffic involving material compensation, either tangible or intangible, direct or indirect, to a third party, a station licensee, a control operator or any other person;

(3) Except for emergency communications as defined in this part, third-party traffic consisting of business communciations on behalf of any party.

(c) The licensee of an amateur radio station may not permit any person to participate in traffic from that station as a third party if:

(1) The control operator is not present at the control point and is not continuously monitoring and supervising the third-party participation to ensure compliance with the rules;

(2) The third party is a prior amateur radio licensee whose license was revoked; suspended for less than the balance of the license term and the suspension is still in effect; suspended for the balance of the license term and relicensing has not taken place; surrendered for cancellation following notice or revocation, suspension or monetary forfeiture proceedings; or who is the subject or a cease and desist order which relates to amateur operation and which is still in effect.

[FR Doc. 85–28843 Filed 12–2–85; 8:45 am]

BILLING CODE 6712-01-M

Proposed Rules

Federal Register
Vol. 50, No. 232
Tuesday, December 3, 1985

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 404

Federal Old-Age, Survivors and Disability Insurance; Effect of Pension From Noncovered Employment

AGENCY: Social Security Administration, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: In these proposed regulations, we explain the modified methods of computing the primary insurance amount of a worker who is first eligible after 1985 for both Social Security old-age or disability insurance benefits and a pension based on his or her noncovered work. Section 113 of Pub. L. 98–21 (the Social Security Amendments of 1983) is intended to eliminate the windfall in Social Security benefits that goes to workers who spent many years in work not covered by Social Security but only a few years in covered work.

DATES: Comments must be submitted on or before February 3, 1986.

ADDRESSES: Comments should be submitted in writing to the Acting Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, Maryland 21203, or delivered to the Office of Regulations, Social Security Administration, 3–A–3 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235 between 8:00 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Jack Schanberger, Room 3–B–4 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, (301) 594–6785.

SUPPLEMENTARY INFORMATION: The formulas used to compute primary insurance amounts (i.e., the basic amount from which a worker's monthly benefits are calculated) are weighted in favor of workers who had low earnings, presumably over many years of work in covered employment. For example, the formula now used most often takes 90 percent of a worker's average indexed monthly earnings up to a prescribed amount ($280 for workers newly eligible in 1985) in the first of three earnings brackets and much smaller percentages (32 percent and 15 percent) in the other two earnings brackets.

This weighing is advantageous for workers who have earned relatively low wages throughout their careers and for workers, such as the periodically unemployed, who have gaps in their earnings histories. However, for a worker who has only minimal coverage, but has spent most of his or her working career in noncovered work for which he or she receives a pension, weighting results in a windfall of Social Security benefits which Congress did not intend. That is, the worker with a low earnings history but no pension from non-covered work receives a relatively high replacement of former earnings when compared to the worker with a history of high covered earnings. This is what Congress intended. But where a worker with low earnings also receives a pension, the result is the unintended windfall of Social Security benefits.

Before the Social Security Amendments of 1983, we computed a worker's primary insurance amount based on his or her earnings in employment covered by Social Security, without regard to any pension to which the worker might be entitled. (However, the 1977 Amendments introduced a provision in section 334 of Pub. L. 95–216 whereby the benefits payable to the spouse or surviving spouse of a worker are reduced if the spouse or surviving spouse is eligible for a Government pension based on his or her own noncovered employment. See 20 CFR 404.408a). Under the provisions of section 113 of Pub. L. 98–21, the primary insurance amount of a worker who is also entitled to a pension based on noncovered employment will, in most cases, be less than it would have been without this provision of the amendments.

We explain in these regulations that if a worker first becomes eligible after 1985 for both old-age or disability insurance benefits and a pension based on noncovered employment, we will use modified benefit formulas and consider the amount of his or her monthly pension when we compute the primary insurance amount for months that he or she is concurrently entitled to Social Security benefits and to a monthly pension. We also explain how we determine the amount of the monthly pension we will use when this amount affects the computation of the primary insurance amount.

Further, we explain how the two computation methods—the average-indexed-monthly-earnings method and the 1977 simplified old-start method—in use for workers who become eligible after 1985 will be modified because of the worker's eligibility for a monthly pension. We explain how we will recompute the primary insurance amount if a worker who first becomes eligible for Social Security benefits after 1985 later becomes entitled to a pension based on noncovered employment. Lastly, we explain how we will recompute because of additional earnings if the initial computation was affected by entitlement to a pension.

Certain workers who are entitled to monthly pensions based on noncovered employment are excluded by law from this modified computation. Workers excluded are those Federal employees and certain employees of nonprofit organizations who became covered under Social Security in 1984, railroad employees, and workers who have 30 years of Social Security coverage for the purpose of the special minimum primary insurance amount (§§ 404.260 through 404.261).

Regulatory Procedures

Executive Order 12291

These regulations have been reviewed under E.O. 12291 and do not meet any of the criteria for a major regulation. As a result of the proposed changes, costs to the Social Security trust funds are expected to be reduced by $67 million for 1986 through 1989. Thus, the annual economic effect of these changes does not exceed $100 million. Additionally, the provisions of these regulations are mandated by law. Therefore, a regulatory impact analysis is not required.

Regulatory Flexibility Act

We certify that these regulations will not, if promulgated, have a significant economic impact on a substantial number of small entities because they affect only benefit amounts payable to individuals. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96-354, the Regulatory Flexibility Act, is not required.

Paperwork Reduction Act

Although these proposed rules to not contain a new reporting requirement, we expect to ask 90,000 individuals annually to furnish information regarding their receipt of a pension from non-covered employment. We will collect this information on a form SSA-150, Modified Benefit Forumla Questionnaire (OMB No. 0960-0395). This form was approved by OMB for use under section 3507, Pub. L. 96-511, the Paperwork Reduction Act of 1980.

(Catalog of Federal Domestic Assistance Programs Nos. 13.802 Social Security—Disability Insurance, 13.803 Social Security—Retirement Insurance.)

List of Subjects in 20 CFR Part 404

Administrative practice and procedures, Death benefits, Disability benefits, Old-Age, Survivors, and Disability Insurance.

Dated: October 7, 1985.

Martha A. McSteen,

Acting Commissioner of Social Security.

Approved: November 8, 1985.

Margaret M. Heckler,

Secretary of Health and Human Services.

PART 404—[AMENDED]

Subpart C of Part 404 of Chapter III of Title 20 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Subpart C continues to read as follows:

Authority: Secs. 205, 215, 1102 of the Social Security Act, as amended; 53 Stat. 1368, as amended; 64 Stat. 506, as amended; 49 Stat. 647; 42 U.S.C. 405, 415, and 1302.

2. Section 404.212 is amended by adding a new paragraph (b)(4) to read as follows:

§ 404.212 Computing your primary insurance amount from your average indexed monthly earnings.

* * * * *

(b) * * *

(4) We may use a modified formula, as explained in § 404.213, if you are entitled to a pension based on your employment which was not covered by Social Security.

* * * * *

3. A new § 404.213 is added to read as follows:

§ 404.213 Computation where you are eligible for a pension based on your noncovered employment.

(a) *When applicable.* Except as provided in paragraph (d) of this section, we will modify the formula prescribed in § 404.212 and in Appendix II of this Subpart in the following situations:

(1) You become eligible for old-age insurance benefits after 1985; or

(2) You become eligible for disability insurance benefits after 1985; and

(3) For the same months after 1985 that you are entitled to old-age disability benefits, you are also entitled to a monthly pension(s) for which you first became eligible after 1985 based in whole or part on your earnings in employment which was not covered under Social Security. (Non-covered employment includes employment outside the United States which is not covered under the United States Social Security system. However, no reduction resulting from entitlement to a pension based on employment covered by a totalization agreement will be made in the computation of a totalized benefit.)

(b) *Amount of your monthly pension that we use.* For purposes of computing your primary insurance amount, we consider the amount of your monthly pension(s) (or the amount prorated on a monthly basis) which is attributable to your noncovered work after 1956 and to which you are entitled (or potentially entitled) for the first month in which you become eligible for Social Security benefits. For this purpose only, we deem you to be entitled to a monthly pension for the first month in which you become eligible for Social Security benefits if you meet all the requirements for the pension except that you have not applied for it. In determining the amount of your monthly pension we will use, we consider the following:

(1) If your pension is not paid on a monthly basis or is paid in a lump-sum, we will allocate it proportionately as if it were paid monthly. (A withdrawl of contributions is not considered a lump-sum payment.) We will allocate this the same way we allocate lump-sum payments for a spouse or surviving spouse whose benefits are reduced because of entitlement to a Government pension. (See § 404.408a.)

(2) If your monthly pension is reduced to provide a survivor's benefit, we will use the unreduced amount.

(3) If you become eligible for a monthly pension after the month in which you became eligible for old-age or disability insurance benefits, we will use the amount of the pension that is payable to you for the first full month you are eligible for it. See § 404.280ff for how we recompute your primary insurance amount because of your later entitlement to a monthly pension.

(4) If the monthly pension amount which we will use in computing your primary insurance is not a multiple of $0.10, we will round it to the next lower multiple of $0.10.

(c) *How we compute your primary insurance amount.* When you become entitled to old-age or disability insurance benefits and to a monthly pension, we will compute your primary insurance amount under the average-indexed-monthly-earnings method (§ 404.212) as modified by paragraphs (c) (1) and (2) of this section. Where applicable, we will also consider the 1977 simplified old-start method as modified by § 404.243 and a special minimum primary insurance amount as explained in §§ 404.260 and 404.261. We will use the highest result from these three methods as your primary insurance amount. We compute under the average-indexed-monthly-earnings method, and use the higher of paragraphs (c) (1) and (2) of this section, as follows:

(1) The formula in Appendix II, except that instead of the first percentage figure (i.e., 90 percent), we use—

(i) 80 percent if you initially become eligible for old-age or disability insurance benefits in 1986;

(ii) 70 percent for initial eligibility in 1987;

(iii) 60 percent for initial eligibility in 1988;

(iv) 50 percent for initial eligibility in 1989;

(V) 40 percent for initial eligibility in 1990 and later years, or

(2) The formula in Appendix II, minus one-half the portion of your monthly pension which is due to noncovered work after 1956 and for which you were eligible in the first month you became eligible for social benefits. If the result is not a multiple of $0.10, we will round to the next lower multiple of $0.10. (See paragraph (b)(3) of this section if you are not eligible for a monthly pension in the first month you are eligible for Social Security benefits.) To determine the portion of your pension which is due to noncovered work after 1956, we consider the total number of years of work used to compute your pension and the percentage of those years which are after 1956, and in which your employment was noncovered. We take that percentage of your total pension as the amount which is due to your noncovered work after 1956.

(d) *Modified computation.* The computation in paragraph (c) of this section is modified if you have more than 25 but fewer than 30 years of coverage as defined for the purpose of computing the special minimum primary insurance amount (See § 404.261). (In computing a totalization benefit, we will count your coverage (as explained in § 404.1906) from a foreign country with which we have a totalization agreement, as well as your U.S. coverage, to determine if you meet this condition or the exception in paragraph (e)(5) of this section.) If you meet this condition, we will use the following percentage instead of the first percentage in Appenix II if the following percentage is larger than the percentage specified in paragraph (c) of this section:

(1) 80 percent if you have 29 years of coverage;

(2) 70 percent if you have 28 years of coverage;

(3) 60 percent if you have 27 years of coverage;

(4) 50 percent if you have 26 years of coverage.

If you later earn an additional year(s) of coverage, we will recompute your primary insurance amount, effective with January of the following year.

(e) *Exceptions.* The computations in paragraphs (c) and (d) of this section do not apply in the following situations:

(1) Do not apply based on receipt of benefits under the Railroad Retirement Act. (See Subpart O of this Part for a discussion of railroad retirement benefits.)

(2) Do not apply if you were entitled before 1986 to disability insurance benefits in any of the 12 months before you reach age 62 or again become disabled. (See § 404.251 for the appropriate computation.)

(3) Do not apply to Federal employees newly hired after 1983 who are mandatorily covered. (See Subpart K of this Part for a discussion of coverage of Federal employees.)

(4) Do not apply to employees of nonprofit organizations who were exempt from Social Security coverage on December 31, 1983, unless those employees were previously covered under a waiver certificate which was terminated prior to that data.

(5) Do not apply if you have 30 years of coverage for the purpose of computing the special minimum primary insurance amount, as explained in §404.261.

(6) Do not apply in computing the amount of benefits payable to your survivors. After your death, we will recompute the primary insurance amount to nullify the effect of any monthly pension, based in whole or in part on noncovered employment, to which you had been entitled.

4. Section 404.240 is amended by adding a sentence to the end thereof to read as follows:

§ 404.240 Old-start method—general.

* * * We may use a modified computation, as explained in § 404.243, if you are entitled to a pension based on your employment which was not covered by Social Security.

5. A new § 404.243 is added to read as follows:

§ 404.243 Computation where you are eligible for a pension based on noncovered employment.

The provisions of § 404.213 are applicable to computations under the old-start method, except for paragraphs (c) (1) and (2) and (d) of that section. Your primary insurance amount will be whichever of the following two amounts is larger:

(a) One-half the primary insurance amount computed according to § 404.241; or

(b) The primary insurance amount computed according to § 404.241, minus one-half the portion of your monthly pension which is due to noncovered work after 1956 and for which you were eligible in the first month you became eligible for Social Security benefits. If the result is not a multiple of $0.10, we will round to the next lower multiple of $0.10. (See § 404.213(b)(3) if you are not eligible for a monthly pension in the first month you are entitled to Social Security benefits.) To determine the portion of your pension which is due to noncovered work after 1956, we consider the total number of years of work used to compute your pension and the percentage of those years which are after 1956 and in which your employment was not covered. We take that percentage of your total pension as the amount which is due to your noncovered work after 1956.

6. Section 404.251 is amended by adding paragraph (c) to read as follows:

§ 404.251 Subsequent entitlement to benefits within 12 months after entitlement to disability benefits ended.

* * * * *

(c) *Disability before 1986; second entitlement after 1985.* When applying the rule in paragraph (b)(3) of this section, we must consider your receipt of a monthly pension based on noncovered employment. (See § 404.213). However, we will disregard your monthly pension if you were previously entitled to disability benefits before 1986 and in any of the 12 months before your second entitlement.

7. Section 404.280 revised to read as follows:

§ 404.280 Recomputations.

At times after you or your survivors become entitled to benefits, we will recompute your primary insurance amount. Usually we will recompute only if doing so will increase your primary insurance amount. However, we will also recompute your primary insurance amount if you first became eligible for old-age or disability insurance benefits after 1985, and later become entitled to a pension based on your noncovered employment, as explained in § 404.213. There is no limit on the number of times your primary insurance amount may be recomputed, and we do most recomputations automatically. In the following sections, we explain:

(a) Why a recomputation is made (§ 404.281)

(b) When a recomputation takes effect (§ 404.282)

(c) Methods of recomputing (§§ 404.283 and 404.284)

(d) Automatic recomputations (§ 404.85.)

(e) Requesting a recomputation (§ 404.286)

(f) Waiving a recomputation (§ 404.287) and

(g) Recomputing when you are entitled to a pension based on noncovered employment (§ 404.288).

8. Section 404.281 is amended by adding paragraph (f) to read as follows:

§ 404.281 Why your primary insurance amount may be recomputed.

* * * * *

(f) *Entitlement to a monthly pension.* We will recompute your primary insurance amount if in a month after you become entitled to old-age or disability insurance benefits, you become entitled to a pension based on noncovered employment, as explained in § 404.213. Further, we will recompute your primary insurance amount after your death to disregard a monthly pension based on noncovered employment which affected your primary insurance amount.

9. Section 404.282 is amended by adding the following sentences after the existing text:

§ 404.282. Effective date of recomputations.

* * * Additionally, if you first became eligible for old-age or disability insurance benefits after 1985 and you later also became entitled to a monthly pension based on noncovered employment, we will recompute your primary insurance amount under the rules in § 404.213; this recomputed Social Security benefit amount is

effective for the first month you are entitled to the pension. Finally, if your primary insurance amount was affected by your entitlement to a pension, we will recompute the amount to disregard the pension, effective with the month of your death.

10. Section 404.284 is amended in paragraph (a) by adding the following sentence after the existing text:

§ 404.284 Recomputations for people who reach age 62, or become disabled or die before age 62 after 1978.

(a) * * * See § 404.288 for the rules on recomputing when you are entitled to a monthly pension based on noncovered employment.

11. Section 404.288 is added to read as follows:

§ 404.288 Recomputing when you are entitled to a monthly pension based on noncovered employment.

(a) *After entitlement to old-age for old-age or disability insurance benefits.* If you first become eligible for old-age or disability insurance benefits after 1985 and you later become entitled to a monthly pension based on noncovered employment, we may recompute your primary insurance amount under the rules in § 404.213. When recomputing, we will use the amount of the pension to which you are entitled or deemed entitled in the first month that you are concurrently eligible for both the pension and old-age or disability insurance benefits. We will disregard the rule in § 404.284(e) that the recomputation must increase your primary insurance amount by at least $1.

(b) *Already entitled to benefits and to a pension based on noncovered employment.* If we have already computed or recomputed your primary insurance amount to take into account your monthly pension, we may later recompute for one of the reasons explained in § 404.281. We will recompute your primary insurance amount under the rules in §§ 404.213 and 404.284. Any increase resulting from the recomputation under the rules of § 404.284 will be added to the most recent primary insurance amount which we had computed to take into account your monthly pension.

(c) *After your death.* If one or more survivors are entitled to benefits after your death, we will recompute the primary insurance amount as though it had never been affected by your entitlement to a monthly pension based in whole or in part on noncovered employment.

[FR Doc. 85-28609 Files 12-2-85; 8:45 am]

BILLING CODE 4190-11-m

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[SW-1-FRL-2933-6]

Rhode Island; Final Authorization of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of tentative determination on application of Rhode Island for final authorization, public hearing, and public comment period.

SUMMARY: The State of Rhode Island has applied for final authorization under the Resource Conservation and Recovery Act (RCRA). EPA has reviewed Rhode Island's application and has made the tentative determination that Rhode Island's hazardous waste program satisfies all of the requirements necessary to qualify for final authorization. Thus, EPA intends to grant final authorization to the State of Rhode Island to operate its program, subject to the limitations on its authority imposed by the Hazardous and Solid Waste Amendments of 1984 (HSWA). Rhode Island's application for final authorization is available for public review and comment, and a public hearing will be held to solicit comments on the tentative determination if sufficient public interest is expressed.

DATES: If sufficient public interest is expressed in holding a hearing, a public hearing is scheduled for January 13, 1986. EPA reserves the right to cancel the public hearing if sufficient public interest in holding a hearing is not communicated to EPA by telephone or in writing, by January 6, 1986. EPA will determine by January 7, 1986, whether there is sufficient interest to hold the public hearing. Rhode Island will participate in the public hearing held by EPA on this subject if a hearing is held. All written comments on Rhode Island's final authorization application must be received by January 6, 1986 unless a hearing is held in which case written comments must be received by January 15, 1986.

ADDRESSES: Copies of the Rhode Island final authorization application are available during normal business hours at the following addresses for inspection and copying by the public:

R.I. Department of Environmental Management, Division of Air and Hazardous Material, 75 Davis Street—204 Cannon Building, Providence, Rhode Island 02908, (401) 277-2797

U.S. EPA Headquarters Library, RM 211A, 401 M Street, SW., Washington, D.C. 20460, (202) 382-5926

U.S. EPA Region I Library, JFK Federal Building, Room E-121, Boston, Massachusetts 02203, (617) 223-5791

Written comments on the application and written or verbal requests of interest in EPA's holding a public hearing on the Rhode Island application must be communicated to Frank Battaglia, State Waste Programs Branch, U.S. EPA, Room 1903, JFK Federal Building, Boston, Massachusetts 02203, telephone: (617) 223-1910.

For information on whether or not EPA will hold a public hearing on the Rhode Island application, based upon EPA's decision that sufficient public interest was conveyed, write or telephone the contact person listed below after January 7, 1986.

If sufficient public interest is expressed, EPA will hold a public hearing on Rhode Island's application for final authorization on January 13, 1986 at 10:00 a.m. at the Cannon Building Auditorium, 75 Davis Street, Providence, Rhode Island.

FOR FURTHER INFORMATION CONTACT: Frank Battaglia, State Waste Programs Brach, U.S. EPA, Room 1903, JFK Federal Building, Boston, Massachusetts 02203, telephone: (617) 223-1910.

SUPPLEMENTARY INFORMATION:

I. Background

Section 3006 of the Resource Conservation and Recovery Act (RCRA) allows EPA to authorize State hazardous waste programs to operate in the State in lieu of the Federal hazardous waste program. Two types of authorization may be granted. The first, type, known as "interim authorization", is a temporary authorization which is granted if EPA determines that the State program is "substantially equivalent" to the Federal program (Section 3006(c), 42 U.S.C. 6226(c)). EPA's implementing regulations at 40 CFR 271.121-271.137 established a phased approach to interim authorization: Phase I, covering the EPA regulations in 40 ECR Part 260-263 and 265 (universe of hazardous wastes, generator standards, transporter standards and standards for interim status facilities) and Phase II, covering the EPA regulations in 40 CFR Parts 124, 264, and 270 (procedures and standards for permitting hazardous waste management facilities).

Phase II, in turn, has three components. Phase IIA covers general permitting procedures and technical standards for containers, tanks, surface impoundments, and waste piles. Phase

IIB covers incinerator facilities, and Phase IIC addresses landfills and land treatment facilities. By statute, all interim authorizations expire on January 31, 1986. Responsibility for the hazardous waste program returns (reverts) to EPA on that date if the State has not received final authorization.

The second type of authorization is a "final authorization" that is granted by EPA if the Agency finds that the State program: (1) Is "equivalent" to the Federal program, (2) is consistent with the Federal program and other State programs, and (3) provides for adequate enforcement (Section 3006(b), 42 U.S.C. 6226(b)). States need not obtain interim authorization in order to qualify for final authorization. EPA regulations for final authorization appear at 40 CFR 271.1–271.23.

II. Rhode Island

The State of Rhode Island received Phase I interim authorization on May 29, 1981 and Phase II interim authorization, Component A on May 29, 1984. On November 30, 1983, the State submitted a draft application for final authorization. EPA's comments on the draft application for final authorization were sent to the State on March 14, 1984. EPA raised a number of issues concerning the Rhode Island draft application and the ability of the State program to demonstrate equivalence to the Federal program.

The State of Rhode Island announced on June 25, 1984 that it intended to apply for final authorization and solicited public comments on its revised draft application and provided opportunity for a public hearing. There were no public comments received nor was there a request for a public hearing, so a hearing was not held. On June 29, 1984, Rhode Island submitted to EPA its official application for final authorization. On August 6, 1984, the application was determined to be complete. On September 10, 1984, EPA transmitted comments to the State requesting clarification on several issues. On November 8, 1984, the State responded to EPA's comments in an addendum to the application. EPA forwarded its comments on the application addendum on February 14, 1985, and the State subsequently submitted minor clarifications to its application between August and October of 1985.

EPA has reviewed Rhode Island's official application and subsequent clarifications and has tentatively determined that the State's program meets all of the requirements necessary to qualify for final authorization. Thus, EPA intends to grant final authorization to Rhode Island to operate its program subject to the limitations on its authority imposed by the HSWA. This determination is in part predicated on the assumption that the State's proposed regulations contained in its application are legally adopted prior to our having to make a final determination on final authorization. Copies of Rhode Island's application are available for inspection and copying at the locations indicated in the **"ADDRESSES"** section of this notice.

EPA will consider all public comments on the tentative determination. Issues raised by those comments may be the basis for a decision to deny final authorization to Rhode Island. EPA expects to make a final decision on whether or not to approve Rhode Island's program by March 3, 1986 and will give notice of it in the **Federal Register**. That notice will respond to all major comments received during the public comment period.

It is possible that the schedule for EPA's final decision could be changed if significant amendments are made to Rhode Island's application in response to public comments. This is because 40 CFR 271.5(c) provides that if the State's application materially changes during EPA's review period, the statutroy review period begins again upon receipt of the revised submission. The State and EPA may also extend the review period by agreement (see 40 CFR 271.5(d)).

III. Effect of HSWA on Rhode Island's Authorization

Prior to the Hazardous and Solid Waste Amendments amending RCRA, a State with Final Authorization would have administered its hazardous waste program entirely in lieu of EPA. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obligated to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by the HSWA take effect in authorized States at the same time as they take effect in non-authorized States. EPA is directed to carry out those requirements and prohibitions in authorized States, including the issuance of full or partial permits, until the State is granted authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, the HSWA applies in authorized States in the interim.

As a result of the HSWA, there will be a dual State/Federal regulatory program in Rhode Island if final RCRA authorization is granted. To the extent the authorized State program is unaffected by the HSWA, the State program would operate in lieu of the Federal program. Where HSWA-related requirements apply, however, EPA would administer and enforce them in Rhode Island until the State receives authorization to do so. Any State requirement that is more stringent than a Federal HSWA provision would also remain in effect; thus, the universe of the more stringent provisions in the HSWA and the approved State program would define the applicable Subtitle C requirement in Rhode Island.

Today's tentative determination does not include authorization of Rhode Island's program for any requirement implementing HSWA. Once the State is authorized to implement a HSWA requirement or prohibition, the State program in that area will operate in lieu of the Federal provision. Until that time the State may assist EPA's implementation of the HSWA under a Cooperative Agreement.

EPA has published a **Federal Register** notice that explains in detail the HSWA and its effect on authorized States. That notice was published at 50 FR 28702–28755, July 15, 1985.

Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. The authorization suspends the applicability of certain Federal regulations in favor of the State program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Executive Order 12291

The Office of Management and Budget (OBM) has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of Sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

Dated: November 13, 1985.

Paul G. Keough,

Acting Regional Administrator.

[FR Doc. 85-28702 Filed 12-2-85; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

43 CFR Part 431

General Regulations for Power Generation, Operation, Maintenance, and Replacement at the Boulder Canyon Project

AGENCY: Department of the Interior, Bureau of Reclamation.

ACTION: Notice of Intent to Propose Rulemaking.

SUMMARY: The Bureau of Reclamation (Reclamation) is proposing a new rule under 43 CFR Part 431, for General Regulations for Power Generation, Operation, Maintenance and Replacement at the Boulder Canyon Project (General Regulations) defining the procedures to be used in the generation of power from the Boulder Canyon Project (Project). The rules are being developed primarily for the purpose of replacing those portions of the "General Regulations for Lease of Power" dated April 25, 1930, and the "General Regulations for Generation and Sale of Power in Accordance with the Boulder Canyon Project Adjustment Act" approved and promulgated on May 20, 1941 (1941 General Regulations), which are under the jurisdiction of the Secretary of the Interior, and which will terminate on May 31, 1987.

FOR FURTHER INFORMATION CONTACT: Robert McCullough, Regional Supervisor of Power, Bureau of Reclamation, P.O. Box 427, Boulder City, Nevada 89005, (702) 293-8411.

SUPPLEMENTARY INFORMATION: The Project Act provides for the construction of works for the protection and development of the Colorado River Basin and for other purposes. Section 5 of the Project Act addresses the Secretary of the Interior's authority, under such regulations as he may prescribe, to contract for the generation and delivery of electrical energy upon charges that will provide sufficient revenue that will cover all expenses of operation and maintenance and repayment of all amounts advanced from the Treasury with interest for the Boulder Canyon Project. Section 9 of the Adjustment Act provides for the operation and maintenance, and the making of replacements, however necessitated, of the Hoover Powerplant by the United States, either directly, or through such agent or agents as the Secretary of the Interior may designate.

The Project Adjustment Act further defined the Secretary of the Interior's authority to promulgate the charges or the basis of computation thereof, for electrical energy generated at Hoover Dam. In accordance with this authority, the Secretary of the Interior approved and promulgated the 1941 General Regulations. Those General Regulations provide for the basis of computation of the charges for electrical energy generated at Hoover Dam through May 31, 1987.

The Department of Energy Organization Act of 1977 transferred the responsibility for the power marketing and transmission functions of the Boulder Canyon Project from Reclamation to the Western Area Power Administration. The power generation, operation, maintenance, and replacement responsibilities of the Project remained with Reclamation. General Regulations for the Charges for the Sale of Power from the Boulder Canyon Project will be the subject of a separate rulemaking by the Secretary of Energy, acting through the Administrator of the Western Area Power Administration under 10 CFR Part 904.

The proposed Regulations, promulgated pursuant to section 8 of the Adjustment Act, will define the procedures to be used in providing contractors with cost data and power generation data associated with the operation of the Boulder Canyon Project.

Dated: November 26, 1985.

Clifford I. Barrett,

Acting Commissioner.

[FR Doc. 85-28682 Filed 12-2-85; 8:45 am]

BILLING CODE 4310-09-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 38 and 151

[CGD 85-061]

Intervals for Required Internal Examination and Hydrostatic Testing of Pressure Vessel Type Cargo Tanks on Barges

AGENCY: Coast Guard, DOT.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Coast Guard is considering amending the regulations that govern internal inspection and hydrostatic test intervals for pressure vessel cargo tanks on barges that transport liquefied gaseous cargoes and Grade A flammable liquids at ambient temperatures. In response to industry requests, the Coast Guard is currently studying the effects of extending the intervals between internal examinations and hydrostatic tests of these tanks, and investigating acceptable alternatives to hydrostatic testing of these tanks. This advance notice solicits information that the Coast Guard believes will be helpful in formulating any future proposed rulemaking.

DATES: Comments must be received on or before March 3, 1986.

ADDRESSES: Comments should be submitted to Commandant (G-CMC/TP24), U.S. Coast Guard Headquarters, Washington, DC 20593. Comments will be available for inspection or copying at the Marine Safety Council (G-CMC/TP24), Room 2418, 2100 2nd Street SW., Washington DC, (202-426-1477), between 7:30 a.m. and 4:00 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Paul C. Potvin (G-MVI-2/TP14), Office of Merchant Marine Safety (G-MVI-2), telephone 202-426-4431. Normal working hours are between 7:30 a.m. and 4:00 p.m., Monday through Friday except federal holidays.

SUPPLEMENTARY INFORMATION: The public is invited to participate in the earliest stage of this contemplated rulemaking by submitting written views, data or arguments. Comments should include the name and address of the commenter, identify this Advance Notice (CGD 85-061) and the specific issues of this Advance Notice to which the comment applies, and the reason for each comment.

All comments received before the expiration of the comment period will be considered before further rulemaking action is taken. No public meeting is planned but one may be held at a time and place to be set in a later notice in the **Federal Register** if requested in writing by interested persons raising genuine issues and the Coast Guard determines that the opportuntiy to make oral presentations will aid in developing specific proposals.

If an acknowledgment is desired, a stamped, self-addressed post card should be enclosed.

Drafting Information

The principal persons involved in drafting this proposal are: Lieutenant

Paul C. Potvin, Project Manager, Office of Merchant Marine Safety and Mr. S. Colby, Project Counsel, Office of Chief Counsel.

Discussion

46 U.S.C. 3703 requires the Secretary of Transportation to prescribe regulations for, but not limited to, the design, construction, alteration, repair, and maintenance of vessels that carry oil or hazardous materials in bulk as cargo or cargo residue, which may be necessary for increased protection against hazards to life and property and for enhanced protection of the marine environment. Coast Guard regulations in 46 CFR Parts 38 and 151 require that most bulk liquefied gases which are flammable or have other dangerous characteristics be shipped in pressure vessel type cargo tanks.

These regulations contain detailed design and construction standards that correlate to the nature of the cargo. They are also specify the intervals for internal examinations, usually from 2 to 8 years. These regulations were established in the mid-1960s to ensure that pressure vessel cargo tanks which carry liquefied flammable gases or other gaseous hazardous materials were suitable for the safe transportation of these products by water. These requirements were originally developed through consultation with knowledgeable persons in the industry, primarily the Chemical Transportation Industry Advisory Committee and through the rulemaking process. Since 1974, the Towing Industry Advisory Committee (now called the Towing Safety Advisory Committee) has requested that the Coast Guard reexamine the requirements for internal examination and hydrostatic testing. In response, a project was initiated in 1975 (CGD 75–116) but data collected at that time was inconclusive. Over the last 10 years, the Coast Guard has received requests from industry for extensions of the internal inspection interval on the basis that internal inspections of pressure vessel tanks have uncovered negligible corrosion. Some requests have been granted and the condition of these tanks has been documented by inspection reports.

A hydrostatic test of 1.5 the maximum allowable working pressure (MAWP) is presently required in addition to the internal inspection for tanks which carry certain especially hazardous cargoes (e.g. chlorine, ethylene oxide . . .). For other tanks, a hydrostatic test is only required when deemed necessary by the Marine Inspector. Hydrostatic testing, while a proven means of determining the structural integrity of a tank, poses an economic burden on the barge operator. The water used in the test or its residue can react with some products and cause accelerated corrosion or product contamination.

Contamination of some cargoes can cause chemical reactions which can lead to dangerous conditions, including an explosion. Purging the residual water vapor from the tank is both expensive and time consuming. In order to address these problems, alternative cost effective and reliable means of verifying the continued integerity of cargo tank will be investigated to determine if there are means of examination capable of detecting any defects which could cause the tank to fail in service.

The following issues concerning pressure vessel cargo tanks were developed by the Coast Guard to assist it in formulating any proposed changes. Interested parties should not feel constrained by the issues presented below.

1. Coast Guard regulations require that these tanks be internally examined at intervals which vary from 2 to 8 years. Standards for the trucking and railroad chemical transportation industry vary widely. In view of the safety and pollution mandates of 46 USC 3703, what intervals are appropriate for internal inspections?

2. What problems are typically encountered with pressure vessel cargo tanks in service? What failure modes are anticipated? What are the typical results and associated costs of such failures when they do occur? Have any pressure vessel type cargo tanks on railcars ever failed in service? What were the circumstances and apparent causes of these failures? Are there any cases where a pressure vessel passed a pressure test and then subsequently failed in service? If so, what were the circumstances?

3. Should the Coast Guard increase the frequency of inspections as a pressure vessel ages?

4. Tanks which carry certain cargoes are required to be hydrostatically tested at intervals of 2 or 4 yars. (e.g. ethylene oxide and propylene oxide 4 years, chlorine and sulfur dioxide 2 years). Are these intervals appropriate? If not, why not?

5. What alternative methods of non-destructive examination should be allowed by regulation? What are the incremental costs associated with each method? What associated advantages or disadvantages are realized?

6. How well could non-destructive examination methods such as ultrasonic, magnetic particle, wet fluorescent magnetic particle, liquid dye penetrant, acoustic emission testing and weld radiography be expected to detect defects which may subsequently cause catastrophic failure of the tank in service?

7. Are there any industry standards in addition to those of the American Society for Nondestructive Testing which could be used to realize the maximum benefit from various non-destructive examination methods?

8. What is the normal service life for pressure vessel cargo tanks in barge service? What is the normal service life for pressure vessel cargo tanks in rail service? In highway service? What increased maintenance and inspection is considered prudent near the end of these service lives?

9. What type of maintenance/inspection program exists for pressure vessels in oil refineries or chemical process industries?

10. Shorter reinspection intervals were established in current regulations for barges carrying alkylene oxides to ensure the tank internals remained substantially free of rust, which can catalyze a dangerous polymerization reaction. Are there any alternative methods which could be used to ascertain the cleaniness of the tank surface? Where have these methods been used? What were the results?

11. Compliance with the ASME pressure vessel code establishes a minimum level of safety. The use of better grades of material, more sophisticated design analyses, and more extensive non-destructive testing during the design and construction phase for pressure vessel cargo tanks would likely have a direct influence on the frequency of periodic inspection and testing. Would an approach of this nature help resolve some of the operational problems associated with current inspection and testing requirements? Which associated design and construction practices would satisfy this approach?

12. What should be used as acceptance criteria for non-destructive examination results? Would it be practical to require fitness for purpose calculations using the principles of fracture mechanics as acceptance criteria?

This is not intended to be an all inclusive list of issues and should not limit any response. Interested persons are invited to submit information on any of the issues raised or all of these isues. All comments will be considered before further action is taken.

List of Subjects

46 CFR Part 38

Cargo vessels, Hazardous materials transportation, Marine safety, Natural gas.

46 CFR Part 151

Hazardous materials transportation, Marine safety, Flammable material, Tank vessels, Barges.

W.J. Ecker,

Captain, U.S. Coast Guard, Acting Chief, Office of Merchant Marine Safety.

[FR Doc. 85-28713 Filed 12-2-85; 8:45 am]

BILLING CODE 4910-14-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 85-358; RM-4948]

FM Broadcast Station in Kingman, AZ

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein proposes the substitution of Class C1 FM Channel 260 for Channel 261A at Kingman, Arizona, and modification of the Class A license of Station KGMN (FM) in response to a petition filed by New West Broadcasting System, Inc. The proposed allotment could provide a third wide coverage area FM station at Kingman.

DATES: Comments must be filed on or before January 21, 1986, and reply comments on or before February 5, 1986.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Mass Media Bureau (202) 634-6530.

SUPPLEMENTARY INFORMATION:.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

The authority citation for Part 73 continues to read:

Authority: Sections 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Notice of Proposed Rule Making

In the matter of amendment of § 73.202(b), table of allotments, FM broadcast stations. (Kingman, Arizona); MM Docket No. 85-358, RM-4948.

Adopted: November 15, 1985.

Released: November 27, 1985.

By the Chief, Policy and Rules Division:

1. Before the Commission for consideration is a petition for rule making filed by New West Broadcasting Systems, Inc. ("Petitioner"), licensee of FM Station KGMN (FM) (Channel 261A), Kingman, Arizona, seeking the substitution of Channel 260C1 for Channel 261A, and modification of its license to specify operation of the Class C1 channel.

2. In justification of its proposal, petitioner states that the requested substitution and modification will enable it to compete more effectively with two other Class C channels in the community that are soon to become operational, and to provide an additional wide area coverage signal to residents of the Kingman area.

3. We believe the proposal warrants consideration in view of the expressed desire for a wide area coverage FM station to serve the public needs and interests. A staff engineering study reveals that the proposed allotment of Channel 260C1 can be made at the present reference site of Station KGMN (FM) consistent with the minimum distance separation requirements of § 73.207 of the Commission's Rules.

4. In view of the foregoing, we will propose to modify the license of Station KGMN (FM) as requested. Mindful of the Commission's modification policy, petitioner advises that should another interest in the proposed allotment be expressed, several other Class C1 channels are available to Kingman to accommodate such interest.[1] See, *Modification of FM and TV Station Licenses, 98 F.C.C. 2d 916 (1984).*[2]

5. Since Kingman is located within 320 kilometers (199 miles) of the common U.S.-Mexico border, the Commission must obtain concurrence of the Mexican government in the proposal.

6. Accordingly, we consider it appropriate to elicit comments on the proposal to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules, as follows:

City	Channel No.	
	Present	Proposal
Kingman, AZ	234, 261A, and 290.	234, 260C1, and 290.

7. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. NOTE: A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

8. Interested parties may file comments on or before January 21, 1986, and reply comments on or before February 5, 1986, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows: David M. Hunsaker, Esq., Putbrese and Hunsaker, McLean House, Suite 100, 6800 Fleetwood Road, P.O. Box 539, McLean, VA 22101 (counsel for petitioner).

9. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules. See, *Certification that sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules,* 46 FR 11549, published February 9, 1981.

10. For further information concerning this proceeding, contact Nancy V. Joyner, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any reply comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

[1] However, a staff engineering study reveals that the channels suggested by petitioner conflict with several pending rulemaking proposals. Therefore, we have determined that Channel 229C1 can be allotted to Kingman consistent with the minimum distance separation requirements of § 73.207(b) of the Commission's Rules, provided the transmitter is sited approximately 18.6 kilometers northeast of the community to avoid short spacing to Class B Station KCHV (FM) (Channel 229), Coachella, California.

[2] Interested parties should consider the pendency of the Commission's rulemaking proposal (Dkt. 85-313), released October 24, 1985, to amend § 1.420(g) of the Commission's Rules, insofar as adjacent channel modification requests are concerned. As proposed, it is not necessary to demonstrate the availability of another equivalent channel to satisfy other interests.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(c)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) dicussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M. Street NW., Washington, DC.

[FR Doc. 85-28717 Filed 12-2-85; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 85-350; FCC 85-609]

Equal Employment Opportunity in the Broadcast Radio and Television Services

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This Notice proposes changes in the Commission's rules and regulations regarding equal employment opportunities in the broadcasting industry. This action is taken to address concerns raised by the Office of Management and Budget in its review of the Commission's broadcast EEO reporting requirements.

DATE: Comments are due January 2, 1986, and replies are due January 17, 1986.

ADDRESS: Federal Communications Commission Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Alan Stillwell or Marcia Glauberman, Mass Media Bureau, (202) 632-6302.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television, AM Radio, FM Radio, Equal employment opportunity.

The collection of information requirement contained in this proposed rule making has been submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act. Persons wishing to comment on this collection of information requirement should direct their comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for Federal Communications Commission.

Notice of Proposed Rulemaking

In the matter of amendment of Part 73 of the Commission's rules concerning equal employment opportunity in the Broadcast Radio and Television Services; MM Docket No. 85-350.

Adopted: November 14, 1985.
Released: November 26, 1985.

By the Commission: Commissioner Patrick concurring and issuing a statement.

Introduction

1. By this *Notice of Proposed Rule Making* (Notice) the Commission is proposing to amend its rules and procedures regarding equal opportunities for employment in the broadcast industry. In particular, the Commission is proposing new equal employment opportunity (EEO) reporting requirements. The Commission believes that these new procedures will be less burdensome for broadcasters and at the same time will provide the Commission with sufficient information to evaluate broadcasters' EEO efforts.

Background

2. The Commission's rules currently require all licensees of broadcast stations to afford equal opportunity in employment.[1] Further, the rules prohibit discrimination in employment on the basis of race, color, religion, national origin, or sex. In addition, the rules require each station to establish, maintain and carry out a positive continuing program of specific practices designed to assure equal opportunity in every aspect of station employment policy and practice.

3. The Commission's rules also require the filing of certain information in order that we may determine that broadcasters are complying with our EEO rules. Broadcasters are required to submit a description of certain aspects of their EEO program on FCC Form 396-A, the 5-point Model EEO Program report, as part of their application for a license for a new station or their request for assignment of the license of an existing station. This report provides guidance concerning certain policies and practices that should be included in a station's EEO program. As part of their

[1] The broadcast EEO rules are set forth in § 73.2080 of the Commission's rules, 47 CFR Section 73.2080.

license renewal application, licensees are also required to file FCC Form 396, the 10-point Model EEO Program report. The 10-point EEO report requests additional information concerning the station's activities during the license term under its EEO program. The Commission also requires broadcast stations to file an Annual Employment Report, FCC Form 395, and to report on the status of any EEO complaints.

4. Under the requirements of the Paperwork Reduction Act of 1980, the Office of Management and Budget (OMB) must review all reporting requirements established by federal agencies.[2] The purpose of this review is to determine "whether the collection of the information by an agency is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility for the agency."[3]

5. On August 28, 1981, OMB disapproved the use of the Commission's EEO program forms, and their associated guidelines for program preparation, for routine collection of information concerning compliance from broadcast stations. In taking this action, OMB stated that "such [data] collection would only be appropriate when a station appears to be engaging in discriminatory practices, as determined from analyses based upon data submitted on the annual [Form] 395 report." OMB, however, has granted a series of extensions to permit continued use of the 5-point and 10-point EEO program forms and their associated guidelines.

Discussion

6. In view of OMB's actions, we believe it is appropriate at this time to review and revise our broadcast EEO reporting procedures. We intend to develop new EEO reporting procedures that will address OMB's concerns and will provide sufficient information for our monitoring activities. In taking this action, we note that the Commission recently established new EEO reporting requirements for cable systems.[4] We believe that certain of the EEO procedures adopted for cable television may be suitable for broadcast EEO reporting and that this model would also generally meet the concerns raised by OMB. In particular, we believe it is desirable to revise our EEO reporting and monitoring procedures to emphasize that we are primarily concerned with a licensee's overall EEO efforts rather than simply the numerical composition of its workforce.

7. The Commission recognizes that a number of issues remain unresolved in the existing broadcast EEO proceeding in Docket No. 21474.[5] However, we believe that the issues and considerations addressed in this Notice generally supercede those of our existing broadcast EEO proceeding. Therefore, in a separate action today we are adopting a Memorandum Opinion and Order to terminate the proceeding in Docket No. 21474.[6] Any issues in Docket No. 21474 not otherwise subsumed or rendered moot by the issues raised in this new proceeding will be considered herein as appropriate.

Broadcast EEO Program Report

8. As discussed above, broadcasters currently are required to submit EEO program information when applying for a station license and requesting renewal of a license. This program information currently includes both general policies and practices and information describing specific activities in furtherance of a station's EEO program. After consideration of the nature of these requirements and OMB's action with regard to the 10-point program report form, we now believe that the guidelines relating to EEO policies and practices contained on the 5-point and 10-point program reporting forms should be reflected in our rules. We also believe that the EEO reporting requirements should be modified so as to address OMB's concerns while still permitting the Commission to perform its regulatory responsibilities.[7]

9. We are, therefore, proposing to incorporate into our rules general guidelines concerning EEO policies and practices of the type that are now contained in the program report forms. The Commission's rules would be amended to include general EEO policy requirements and suggestions for specific practices to ensure compliance with such policies.[8] A broadcaster's basic EEO requirements and obligations would remain essentially the same, but the reporting burdens associated with these requirements would be refocused to provide information that reflects more closely the licensee's overall EEO efforts. In view of this proposal, we believe that the 5-point program report form can be eliminated and the reporting requirements of the 10-point program report can be made significantly less burdensome.[9]

10. In place of the existing 10-point program form, we are proposing a new Broadcast EEO Program Report form consisting of four parts.[10] The first part would be a schedule of questions concerning the station's activities under the EEO program requirements. These questions would be similar to the questions included on the annual cable EEO report and would require a "yes" or "no" answer. Licensees would be asked to provide explanations of any negative responses.

11. The second part of the new program report form would request brief descriptions of the duties and responsibilities of employees in certain job categories. This information would be used to ensure that employees were classified correctly on the annual employment report. In general, we plan to ask for three job descriptions from job categories we would select based on the station's annual employment report or on a random basis. Comments on this approach are requested. In particular, we request comment on whether this information should be a standard part of the renewal EEO filing or should be obtained from a random sample of renewal applicants. Another approach would be to require this information only from larger stations, e.g., those with 50 or more employees.

12. The third part would request descriptive responses to questions (generally, three such questions would be asked) concerning the licensee's EEO practices. The last part of the form would consist of labor force data. We intend to supply labor force information for the MSA or county in which the station is located. However, we would also permit licensees to submit alternate labor force figures accompanied by an

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[2] *See* 44 U.S.C. 3501 *et seq.*

[3] 44 U.S.C. 3504(c)(2)

[4] *See Report and Order* in MM Docket No. 85-61 (Cable *Report and Order*), adopted September 18, 1985, FCC 85-511. In the Cable *Report and Order*, the Commission amended its cable rules to implement the EEO provisions of the Cable Communications Policy Act of 1984 (Cable Act).

[5] *See Third Report and Order* in Docket No. 21474, 46 FR 35094 (1981).

[6] *See Memorandum Opinion and Order* in Docket No. 21474, November 14, 1985, FCC 85- .

[7] This approach is similar to approach taken with regard to the cable EEO requirements. We note in the Cable Act the Congress instructed that the cable EEO program requirements be made part of Commission's rules. *See*, 47 U.S.C. 634(d).

[8] The proposed rule changes are set forth in Appendix A.

[9] The 5-point program report consists primarily of guidelines relating to general EEO policies and practices that the broadcaster must implement to comply with our EEO requirements. Under the approach proposed herein, these general EEO policies and practices would be incorporated into the Commission's rules and reporting would be limited to information describing a licensee's specific EEO efforts.

[10] The proposed new Form 396 Broadcast EEO Program Report is shown in Appendix B.

appropriate explanation.[11] The new Form 396 would also inform licensees that they could submit any other additional information that they believe might be useful to the Commission in evaluating their EEO efforts. For example, such additional information might include detailed analyses or statements concerning the relationships between the number of minority and female workers employed and the number of minorities and females in the available labor force with the background, skills, or experience appropriate to the relevant job categories.

13. We believe that this report would provide the Commission with sufficient and appropriate data to evaluate whether a broadcaster was making satisfactory efforts to comply with our EEO requirements.[12] While this proposal does not fully comport with OMB's position that the Commission should only collect EEO program information when a station's employment profile suggests that the station may be engaging in discriminatory practices, we nonetheless believe that this information is necessary to carry out our regulatory obligations in this area. Based on our experience, we believe that workforce data alone are inappropriate for use as the sole indicator of a station's compliance with the EEO rules. Furthermore, we are concerned that an evaluation process that relied solely on employment data would overemphasize the statistical description of a station's workforce. The Commission's principal concern in this area is that broadcasters make good faith efforts to hire and promote in a non-discriminatory manner, not whether a station employment profile meets some arbitrary percentage standards.

14. To avoid these problems, we intend to continue to base our evaluations on indicators of a stations overall efforts to comply with the EEO rules.[13] We believe that program information is an essential component of the description of a station's EEO efforts. Comments are requested on the above proposals for modifying our broadcast EEO rules and program information reporting requirements. Interested parties also are invited to submit alternate proposals or modifications to the Commission's proposals.

Annual EEO Filing Requirements

15. As indicated above, broadcast licensees currently must also file an "annual employment report" on Form 395.[14] This report requests the number of employees by sex and race/national origin in each of nine job categories. The form provides for separate reporting of data for full-time and part-time employees. The Commission requires all stations with five or more full-time employees to complete all sections of Form 395 (e.g. to submit employment information). Stations with fewer than five full-time employees are only required to complete the identification section of the form.

16. We believe that it is appropriate to consider certain changes in the annual broadcast employment reporting requirements. In this respect, we believe it would be beneficial to conform the broadcast annual report form to the reporting format used by the Equal Employment Opportunity Commission (EEOC) on its Form EEO–1. We note that OMB suggested this approach in addressing the Commission's annual EEO report for cable television systems in MM Docket No. 85–61.[15] Under this proposal, the new reporting format would continue to identify the number of employees by race/national origin and sex in the same nine job categories as the current broadcast annual employment report. However, these data would be arranged in a slightly different manner. In addition, full-time and part-time employees would be combined in the same table rather than reported separately.

17. We believe that such a reporting change would to some extent lessen the reporting burden for licensees and that it would not adversely impact our EEO monitoring activities. This proposal also would eliminate duplication of preparation effort for stations that must also file with the EEOC. Those stations would be permitted to file a copy of their EEO–1 form as an attachment to the annual employment report. In considering these changes in the annual reporting procedures, we are attentive to the fact that there are certain differences in the distribution of full-time and part-time employment between cable systems and broadcast stations. Accordingly, while we are proposing to amend the annual employment report (Form 395) to conform with the EEO–1 format and to incorporate these changes in a new Form 395B,[16] we request comments on this proposal and, in particular, on whether it is useful to continue to collect separate data for full- and part-time employees from broadcasters.[17]

Conclusion

18. We believe the proposals described in this *Notice* address OMB's concerns with respect to the Commission's EEO reporting requirements. We also believe that these proposals would provide the Commission with sufficient information to evaluate a broadcast licensee's efforts to comply with the EEO requirements and would minimize the reporting and administrative burden of these requirements for both the broadcaster and the Commission. During the course of this proceeding and pending the adoption of final rules in the broadcast EEO matter, licensees are

[11] For example, alternative data might be appropriate where (1) the distance of the station from areas of minority concentration in the MSA is great; (2) commuting from those areas to the station is difficult (such difficulties may be based on distance but may be based on other factors such as lack of public transportation); or (3) recruitment efforts directed at the MSA minority labor force have been fruitless. *See also* Cable *Report and Order*, at para. 51.

[12] We recognize that the U.S. Court of Appeals in *Bilingual Bicultural Coalition, etc. v. FCC*, 595 F. 2d 621 (D.C. Cir. 1978) looked favorably upon the Commission's steps to obtain more detailed information about minority recruitment, hiring, training and promotion. While we believe that our new reporting requirements will provide sufficient information in most cases, we plan to ask broadcasters to provide additional information whenever we deem it necessary. As an alternative to this approach, we request comment on the possibility of requiring licensees to submit hiring and promotion data as part of the new Form 396.

[13] Our evaluation of a licensee's EEO efforts would be based on the information submitted on new Broadcast EEO Program Report form, the annual employment reports, any adjudicated findings of discrimination, and any further information that we might obtain through investigative requests or that the station might choose to provide. While we propose to continue to use our EEO guidelines in the evaluation process, they will be used solely for the administrative purpose of identifying stations whose EEO efforts might require further review.

[14] Under the current broadcast EEO requirements, licensees are required to submit employment data for stations and headquarters units. Our examination of our evaluation procedure indicates that EEO performance determinations are based primarily on the station reports and that headquarters data are seldom considered in our monitoring of this area. We invite interested parties to comment on whether we should continue to require annual reports from headquarters or other regional and national offices of broadcast licensees.

[15] *See* OMB's comments in MM Docket No. 85–61.

[16] The proposed FCC Form 395B report is shown in Appendix C. Form 395 would continue to be used in certain common carrier services.

[17] We also note that as a procedural matter cable entities with fewer than six full-time employees are not required to submit annual employment reports. *See* Cable *Report and Order*, at paras. 27 and 28. Based on administrative ease and consistency, we are proposing that the filing requirement threshold for broadcasters be changed from five to six full-time employees to coincide with the cable EEO reporting requirements. We request comment on this proposal.

advised that we will continue to rely on the existing EEO reporting requirements and monitoring procedures.

Regulatory Flexibility Act Initial Analysis

19. Pursuant to the Regulatory Flexibility Act of 1980, the Commission finds:

I. *Reason for action.* This action is being taken in response to OMB's review of our broadcast EEO reporting requirements.

II. *Objectives.* This proceeding is intended to address the concerns raised by OMB in its disapproval of the use of the Commission's 5-point and 10-point EEO program reports for routine data collection. This proceeding also seeks to reduce the administrative burden of the Commission's broadcast EEO reporting requirements.

III. *Legal basis.* Authority for action as proposed in this rule making proceeding is provided in sections 4(i) and 303 of the Communications Act of 1934, as amended.

IV. *Description, potential impact and number of small entities affected.* Under the Commission's proposals, most broadcast stations would continue to file a modified Annual Employment Report (FCC Form 395). The revised reort would eliminate the need for those stations that are also required to file EEO–1 reports to prepare a separate employment summary for the Commission. In addition, the threshold for filing EEO reports is proposed to be increased from five to six full-time employees. This would eliminate a filing requirement for approximately one percent of the broadcast licensees. We also propose to eliminate the 10-point EEO program report that is filed by all licensees with their renewal application, and the 5-point EEO program report that is filed by applicants for construction permits or assignment of license. The 10-point EEO program report would be replaced with a new Broadcast EEO Program Report that would be filed by stations with six or more employees in the year of their license renewal. The proposed action would affect approximately 11,000 broadcast stations.

V. *Recording, record keeing and other compliance requirements.* Under the Commission's proposals, licensees would continue to file an annual employment report and would file the new Broadcast EEO Program Report with their license renewal application. There would be no change in recording, record keeping, or other compliance requirements.

VI. *Federal rules which overlap, duplicate or conflict with this rule.* None.

VII. *Any significant alternatives minimizing impact on small entities and consistent with stated objectives.* None.

20. Written comments are requested on the initial regulatory flexibility analysis. These comments must be filed in accordance with the same filing deadlines as comments on the rest of this *Notice*, but they must have a separate and distinct heading designating them as responses to the regulatory flexibility analysis. The Secretary shall cause a copy of the *Notice*, including the initial regulatory flexibility analysis, to be sent to the Chief Counsel for Advocacy of the Small Business Administration in accordance with section 603(a) of the Regulatory Flexibility Act (Pub. L. No. 96–354, 94 Stat. 1164, 50 U.S.C. 601 *et seq.*) (1982).

21. For the purposes of this non-restricted notice and comment rule making proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a *Notice of Proposed Rule Making* until the time a public notice is issued stating that a substantive disposition of the matter is to be considered at a forthcoming meeting or until a final Order disposing of the matter is adopted by the Commission, whichever is earlier. In general, an *ex parte* presentation is any written or oral communication (other than formal written comments/pleadings and formal oral arguments) between a person outside the Commission and Commissioner or member of the Commission's staff which addresses the merits of the proceeding. Any person who submits a written *ex parte* presentation must serve a copy of that presentation on the Commission's Secretary for inclusion in the public file. Any person who makes an oral *ex parte* presentation addressing matters not fully covered in any previously-filed written comments for the proceeding must prepare a written summary of that presentation; on the day of oral presentation, that written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it related. See generally, § 1.1231 of the Commission's Rules, 47 CFR 1.1231.

22. This *Notice of Proposed Rule Making* is issued pursuant to authority contained in Sections 4(i) and 303 of the Communications Act of 1934, as amended. Interested parties may file comments on or before January 2, 1986, and reply comments on or before January 17, 1986. All relevant and timely comments filed in response to this *Notice* will be considered by the Commission. In accordance with the provisions of Section 1.419 of the Commission Rules, an original and five copies of all comments, replies, briefs and other documents filed in this proceeding shall be furnished the Commission. Further, members of the general public who wish to participate informally in the proceeding may submit one copy of their comments, specifying the docket number in the heading. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information or a writing indicating the nature and source of such information is placed in the public file, and provided the fact of the Commission's reliance on such information is noted in the Report and Order.

23. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, Northwest, Washington, DC.

24. The proposals contained herein have been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose new or modified requirements or burdens upon the public. Implementation of any new or modified requirement or burden will be subject to approval by the Office of Management and Budget as prescribed by the Act.

25. For further information concerning this proceeding, contact Alan Stillwell, Policy and Rules Division, Mass Media Bureau, (202) 632–6302.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix A

PART 73—[AMENDED]

47 CFR Part 73 is amended as follows:

1. The authority citation for Part 73 would continue to read as follows:

Authority: 47 U.S.C. 154 and 303.

2. 47 CFR 73.2080 would be revised to read as follows:

§ 73.2080 Equal employment opportunities.

(a) *General EEO policy.* Equal opportunity in employment shall be afforded by all licensees or permittees of commercially or noncommercially operated AM, FM, TV, or international broadcast stations (as defined in this

part) to all qualified persons, and no person shall be discriminated against in employment by such stations because of race, color, religion, national origin, or sex.

(b) *EEO program.* Each broadcast station shall establish, maintain, and carry out a positive continuing program of specific practices designed to ensure equal opportunity in every aspect of station employment policy and practice. Under the terms of its program, a station shall:

(1) Define the responsibility of each level of management to ensure a positive application and vigorous enforcement of its policy of equal opportunity, and establish a procedure to review and control managerial and supervisory performance;

(2) Inform its employees and recognized employee organizations of the positive equal employment opportunity policy and program and enlist their cooperation;

(3) Communicate its equal employment opportunity policy and program and its employment needs to sources of qualified applicants without regard to race, color, religion, national origin, or sex, and solicit their recruitment assistance on a continuing basis;

(4) Conduct a continuing program to exclude all unlawful forms of prejudice or discrimination based upon race, color, religion, national origin, or sex from its personnel policies and practices and working conditions; and

(5) Conduct a continuing review of job structure and employment practices and adopt positive recruitment, training, job design, and other measures needed to ensure genuine equality of opportunity to participate fully in all organizational units, occupations, and levels of responsibility.

(c) *EEO program requirements.* A broadcast station's equal employment opportunity program should reasonably address itself to the specific areas set forth below, to the extent possible, and to the extent that they are appropriate in terms of the station's size, location, etc.:

(1) Disseminate its equal opportunity program to job applicants, employees, and those with whom it regularly does business. For example, this requirement may be met by:

(i) Posting notices in the station's office and other places of employment, informing employees, and applicants for employment, of their equal employment opportunity rights, and their right to notify the Equal Employment Opportunity Commission, the Federal Communications Commission, or other appropriate agency, if they believe they have been discriminated against. Where a significant percentage of employees, employment applicants, or residents of a station's community of a license or metropolitan statistical area (MSA) are Hispanic, such notices should be posted in Spanish and English. Similar use should be made of other languages in such posted equal employment opportunity notices, where appropriate;

(ii) Placing a notice in bold type on the employment application informing prospective employees that discrimination because of race, color, religion, national origin, or sex is prohibited and that they may notify the Equal Employment Opportunity Commission, the Federal Communications Commission, or other appropriate agency if they believe they have been discriminated against;

(iii) Seeking the cooperation of labor unions, if represented at the station, in the implementation of its EEO program and the inclusion of nondiscrimination provisions in union contracts;

(iv) Utilizing media for recruitment purposes in a manner that will contain no indication, either explicit or implicit, of a preference for one sex over another and that will reach minorities and women.

(2) Use minority organizations, organizations for women, media, educational institutions, and other potential sources of minority and female applicants, to supply referrals whenever job vacancies are available in its operation. For example, this requirement may be met by:

(i) Placing employment advertisements in media that have significant circulation among minority-group people in the recruiting area;

(ii) Recruiting through schools and colleges, including those located in the station's local area, with significant minority-group enrollments;

(iii) Maintaining systematic contacts, both orally and in writing, with minority and human relations organizations, leaders, and spokesmen and spokeswomen to encourage referral of qualified minority or femal applicants;

(iv) Enouraging current employees to refer minority or female applicants;

(v) Making known to the appropriate recruitment sources in the employer's immediate area that qualified minority members and females are being sought for consideration whenever you hire and that all candidates will be considered on a nondiscriminatory basis.

(3) Evaluate its employment profile and job turnover against the availability of minorities and women in its service area. For example, this requirement may be met by:

(i) Comparing the composition of the relevant labor area with the composition of the station's employees;

(ii) Comparing, within each job category of the station, the people available for such positions;

(iii) Where there is underrepresentation of either minorities and/or women, examining the company's personnel policies and practices to assure that they do not inadvertently screen out any protected group and take appropriate action where necessary.

Note.—These data are generally available on a metropolitan statistical area (MSA) or county basis.

(4) Undertake to offer promotions of minorities and women in a nondiscriminatory fashion to positions of greater responsibility. For example, this requirement may be met by:

(i) Instructing those who make decisions on placement and promotion that minority employees and females are to be considered without discrimination, and that job areas in which there is little or no minority or female representation should be reviewed to determine whether this results from discrimination;

(ii) Giving minority groups and female employees equal opportunity for positions which lead to higher positions. Inquiring as to the interest and skills of all lower paid employees with respect to any of the higher paid positions, followed by assistance, counselling, and effective measures to enable employees with interest and potential to qualify themselves for such positions;

(iii) Providing opportunity to perform overtime work on a basis that does not discriminate against qualified minority group or female employees.

(5) Analyze its efforts to recruit, hire, promote, and use the services of minorities and women and explain any difficulties encountered in implementing its equal employment opportunity program. For example, this requirement may be met by:

(i) Avoiding use of selection techniques or tests that have the effect of discriminating against qualified minority groups or females;

(ii) Reviewing seniority practices to ensure that such practices are nondiscriminatory;

(iii) Examining rates of pay and fringe benefits for employees having the same duties, and eliminating any inequities based upon race or sex discrimination.

Note.—Appendices B and C will not be shown in the Code of Federal Regulations.

Appendix B

(For FCC Use Only)
Code No.

FCC Form 396 Broadcast EEO Program Report 198–

A. Name of Licensee or Permittee:

B. Address:

Type of Broadcast Station (Check one)—
Commercial Broadcast Stations

[ ] AM
[ ] FM
[ ] Combined AM & FM
[ ] FM Affiliated With AM in Same Area
[ ] TV
[ ] International

Noncommercial Broadcast Station

[ ] Educational Radio
[ ] Educational TV

Part I: EEO Policy and Program Requirements

Check yes or no to each of the following questions. Attach an explanation of any no response.

Yes	No	
( )	( )	1. Do you disseminate your EEO program to job applicants, employees, and those with whom you regularly do business?
( )	( )	2. Do you contact minority organizations, women's organizations, media, educational institutions, and other potential sources of minority and female applicants for referrals whenever job vacancies are available in your organization?
( )	( )	3. Do you evaluate your employment profile and job turnover against the availability of minorities and women in the licensed service area?
( )	( )	4. To the extent possible, do you undertake to offer promotions to positions of greater responsibility to minorities and women in a nondiscriminatory manner?
( )	( )	5. Do you analyze the results of your efforts to recruit, hire, promote, and use the services of minorities and women and use these results to evaluate and improve your EEO program?
( )	( )	6. Do you define the responsibility of each level of management to ensure a positive application and vigorous enforcement of its policy of equal employment opportunity and maintain a procedure to review and control managerial and supervisory performance?
( )	( )	7. Do you conduct a continuing program to exclude every form of prejudice or discrimination based upon race, color, religion, national origin, or sex from your personnel policies and practices and working conditions?
( )	( )	8. Do you conduct a continuing review of job structure and employment practices and maintain positive recruitment training, job design, and other measures needed to ensure genuine equality of opportunity to participate fully in all organizational units, occupations, and levels of responsibility?

Part II: Employee Job Descriptions

Give brief job descriptions for employees in the job categories specified below. The number in parentheses ( ) indicates the number of different job descriptions that are to be submitted for each category. If no female or minorities are employed in the specified job category, choose another job category and indicate this on the form. Job descriptions should include the position title and a brief description of the major duties and responsibilities of the individual(s) in the position. In addition, the number of individuals currently employed under the position title and a breakdown of these employees by sex and minority/national origin should be included.

1. ( ) Officials and managers
2. ( ) Professionals
3. ( ) Technicians
4. ( ) Sales workers
5. ( ) Office and clerical
6. ( ) Craft workers (skilled)
7. ( ) Operatives (semi-skilled)
8. ( ) Laborers (unskilled)
9. ( ) Service workers

Other instructions:

Part III: Inquiries Concerning EEO Program and Practices

Submit responses to the inquiries indicated by an "X". Responses should be brief, but must provide sufficient information to describe the employment unit's activity and efforts in the area of inquiry.

1. ( ) Describe your efforts to disseminate your equal employment opportunity program to job applicants, employees, and those with whom you regularly do business.

2. ( ) Name the minority organizations, organizations for women, media, educational institutions, and other recruitment sources used to attract minority and female applicants whenever job vacancies become available.

3. ( ) Report the findings of your evaluation of the station's employment profile and job turnover against the availability of minorities and women in the relevant labor market.

4. ( ) Explain your efforts to promote minorities and women in a nondiscriminatory manner to positions of greater responsibility.

5. ( ) Report the findings of your analysis of efforts to recruit, hire, promote, and use the services of minority and female entrepreneurs and explain any difficulties encountered in implementing your EEO program.

6. ( ) Describe the responsibility of each level of the station's management with respect to application and enforcement of your EEO policy and explain the procedure for review and control of managerial and supervisory performance.

7. ( ) Describe the elements of your program to exclude prejudice or discrimination based upon race, color, religion, national origin, or sex from your station's personnel policies and practices and working conditions.

8. ( ) Describe the manner in which you conduct a continuing review of the station's job structure and employment practices and the positive recruitment, training, job design, and other measures adopted to ensure genuine equality of opportunity to participate fully in all organizational units, occupations, and levels of responsibility.

9. ( ) Other inquiries:

BILLING CODE 6712-01-M

PART IV AVAILABLE LABOR FORCE AND OCCUPATIONAL AVAILABILITY DATA

FCC SUPPLIED LABOR FORCE DATA

SOURCE: ( ) MSA
( ) COUNTY

JOB CATEGORIES	Women (A)	Black (Not Hispanic) (B)	Hispanic (C)	Asian or Pacific Islander (D)	American Indian, Alaskan Native (E)
1. Officials & Managers					
2. Professionals					
3. Technicians					
4. Sales workers					
5. Office and clerical					
6. Craft workers (Skilled)					
7. Operatives (Semi-skilled)					
8. Laborers (Unskilled)					
9. Service Workers					
10. TOTAL					

BROADCASTER SUPPLIED LABOR FORCE DATA
(ATTACH EXPLANATION)
SOURCE: ( ) MSA
( ) COUNTY
( ) OTHER

JOB CATEGORIES	Women (A)	Black (Not Hispanic) (B)	Hispanic (C)	Asian or Pacific Islander (D)	American Indian, Alaskan Native (E)
1. Officials & Managers					
2. Professionals					
3. Technicians					
4. Sales workers					
5. Office and clerical					
6. Craft workers (Skilled)					
7. Operatives (Semi-skilled)					
8. Laborers (Unskilled)					
9. Service Workers					
10. TOTAL					

NOTE: COLUMNS B THRU E SHOULD INCLUDE BOTH MALES AND FEMALES

BILLING CODE 6712-01-C

Part V: Additional Information

In addition to the responses to Parts I through IV, licensees and permittees may also voluntarily provide in the space provided below or as an attachment any supplemental information that they believe might be useful in evaluating their efforts to comply with the Commission's EEO provisions. There is no requirement to provide additional data or information.

Section VI Certification

This report must be certified, as follows:

A. By licensee or permittee, if an individual.

B. By a partner, if a partnership:

C. By an officer, if a corporation or association; or

D. By an attorney of the licensee or permittee, in case of physical disability or absence from the United States of the licensee or permittee.

Willful false statements made on this form are punishable by fine or imprisonment, use Title 18 section 1001.

I certify that to the best of my knowledge, information and belief, all statements contained in this report are true and correct.

Signed _____
Title _____
Date _____
Name of Respondent _____
Telephone No. (include area code) _____

FCC Notice to Individuals Required by the Privacy Act and the Paperwork Reduction Act

The solicitation of personal information requested in this application is authorized by the Communications Act of 1934, as amended. The principal purpose for which the information will be used is to determine if the benefit requested is consistent with the public interest. The staff, consisting variously of attorneys, accountants, engineers, and application examiners, will use the information to determining whether the application should be granted, denied, dismissed, or designated for hearing. If all the information requested is not provided, the application may be returned without action having been taken upon it or its processing may be delayed while a request is made to provide the missing information. Accordingly, every effort should be made to provide all necessary information. Your response is required to obtain the requested Authority.

The Foregoing notice is required by the Privacy Act of 1974, P.L. 93–579, December 31, 1974, 5 U.S.C. 552a(e)(3) and the Paperwork Reduction Act of 1980, P.L. 96–511, December 11, 1980, 44 U.S.C. 3507.

Appendix C

(For FCC Use Only)
Code No.

FCC Form 3958 Broadcast Station Annual Employment Report 198–

Section I

A. Name of Licensee or Permittee:

B. Address:

Section II Type of Broadcast Station (Check one)—Commercial Broadcast Stations

[ ] AM
[ ] FM
[ ] Combined AM & FM
[ ] FM Affiliated with AM in Same Area
[ ] TV
[ ] International

Noncommerical Broadcast Station

[ ] Educational Radio
[ ] Educational TV

Section III

A. Type of Reporting Units Covered in This Report
[ ] Single Station Employment Unit
[ ] Single Employment Unit Consisting of Two or More Stations

B. Station Information

Call letters	Station location

Section IV

A. Pay Period Covered by This Report (Date)

B Check Applicable Box
[ ] Fewer Than Six Full-Time Employees During the Selected Payroll Period (Complete Sections I to IV and Certification Statement and Return to FCC)
[ ] Six or More Full-Time Employees During Selected Payroll Period (Complete Sections I to IV and Certification Statement and Return to FCC)

BILLING CODE 6712-01-M

SECTION V EMPLOYEE DATA

FULL-TIME AND PART-TIME PAID EMPLOYEE DATA

JOB CATEGORIES	TOTAL	MALE					FEMALE				
		White (Not Hispanic)	Black (Not Hispanic)	Hispanic	Asian or Pacific Islander	American Indian. Alaskan Native	White (Not Hispanic)	Black (Not Hispanic)	Hispanic	Asian or Pacific Islander	American Indian. Alaskan Native
Officials & Managers											
Professionals											
Technicians											
Sales workers											
Office and clerical											
Craft workers (Skilled)											
Operatives (Semi-skilled)											
Laborers (Unskilled)											
Service Workers											
TOTAL											

BILLING CODE 6712-01-C

Section VI Certification

This report must be certified, as follows:

A. By licensee or permittee, if an individual.

B. By a partner, if a partnership:

C. By an officer, if a corporation or association; or

D. By an attorney of the licensee or permittee, in case of physical disability or absence from the United States of the licensee or permittee.

Willful false statements made on this form are punishable by fine or imprisonment, use Title 18 section 1001.

I certify that to the best of my knowledge, information and belief, all statements contained in this report are true and correct.

Signed _____
Title _____
Date _____
Name of Respondent _____
Telephone No. (include area code) _____

FCC Notice to Individuals Required by the Privacy Act and the Paperwork Reduction Act

The solicitation of personal information requested in this application is authorized by the Communications Act of 1934, as amended. The principal purpose for which the information will be used is to determine if the benefit requested is consistent with the public interest. The staff, consisting variously of attorneys, accountants, engineers, and application examiners, will use the information to determining whether the application should be granted, denied, dismissed, or designated for hearing. If all the information requested is not provided, the application may be turned without action having been taken upon it or its processing may be delayed while a request is made to provide the missing information. Accordingly, every effort should be made to provide all necessary information. Your response is required to obtain the requested Authority.

The Foregoing notice is required by the Privacy Act of 1974, P.L. 93-579, December 31, 1974, 5 U.S.C. 552a(e)(3) and the Paperwork Reduction Act of 1980, P.L. 96-511, December 11, 1980, 44 U.S.C. 3507.

Concurring Statement of Commissioner Dennis R. Patrick

In re: Amendment of Part 73 of the Commission's Rules Concerning Equal Employment Opportunity in the Broadcast Radio and Television Services.

I agree that our forms and evaluation process should be reviewed, but I continue to be concerned about the undesired effects of the Commission's formal incorporation of processing guidelines into our EEO evaluation process. I do not, however, object to the use of processing guidelines for internal administrative purposes. *See* Separate Statement of Commissioner Dennis R. Patrick Dissenting in Part, Amendment of the Commission's Rules to Implement the Equal Employment Opportunity Provisions of the Cable Communications Policy Act of 1984 (MM Docket No. 85-61).

I am also concurring with this *Notice of Proposed Rulemaking* for an additional reason. While I believe that efforts, rather than numbers, should be the focus of our EEO compliance program, *id.*, the data we collect should be as accurate as possible. I am, therefore, also concerned that the proposal to permit licensees to combine full-time and part-time employees in the employee data section of FCC Form 395B may not provide the Commission with all of the information it needs to monitor EEO compliance. Currently, licensees are required to report full-time and part-time employees on a separate basis. Under the proposed combined format, a licensee could, for FCC reporting and compliance purposes, improve its minority employee profile overall by hiring minorities on a part-time basis only. My tentative view is that reporting full-time and part-time employees on a separate basis will give the Commission a more accurate picture of the licensee's hiring practices.

[FR Doc. 85-28644 Filed 12-2-85; 8:45 am]
BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 192

[Docket No. PS-88, Notice 1]

Gas Pipeline Damage Prevention Programs

AGENCY: Research and Special Programs Administration (RSPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to delete the rule that requires gas pipeline operators to respond to notices of intended excavation in areas that do not contain buried gas pipelines. The current rule is unduly burdensome and counterproductive in connection with many existing damage prevention programs. The proposed rule change should encourage greater participation in "one-call" system programs and reduce program costs.

DATE: Interested persons are invited to submit written comments on this proposal by February 3, 1986. Late filed comments will be considered to the extent practicable.

FOR FURTHER INFORMATION CONTACT: Paul J. Cory, (202) 426-2082. Copies of the proposal and documents related thereto may be obtained from the Dockets Branch, Room 8426, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street SW., Washington, D.C. 20590, (202) 426-3148.

SUPPLEMENTARY INFORMATION:

Background

Beginning April 1, 1983, operators of gas pipelines were required to conduct or participate in damage prevention programs to reduce the risk of excavation damage to buried pipelines in populated areas (47 FR 13818, April 1, 1982). Section 192.614(b) sets forth key elements of the programs, some of which are: receiving calls about pending excavations, advising callers whether there are pipelines in the areas of excavation, and temporarily marking any pipelines in those areas.

To publicize the program and provide a means for receiving notices of planned excavation, most gas pipeline operators participate in "one-call" systems. Most gas distribution operators also notify homeowners within their service area of the "one-call" system by periodically including with gas bills the telephone number to be called before digging. These systems, which may be run by governmental or private entities, advertize a single phone number for all excavators in an area to call to tell pipeline and other underground utility operators of the time and place of intended excavations. Information received by the systems is then relayed to utility operators.

Problem

When a "one-call" system receives a call from someone who plans to excavate, maps divided into grids are used to identify utilities that may be affected by the excavation. Each operator of utilities located anywhere inside a grid in which the excavation will occur is then notified of the call. Under § 192.614(b)(4), gas pipeline operators who receive such notices of intent to excavate must call (or otherwise actually notify) the persons giving notice to tell them whether or not a pipeline is located in the area of excavation activity. When grid sizes are large, operators have to return many calls for excavations planned inside the grid that will occur far away from their pipelines. Such negative call-backs can take the full time of several employees and may not produce safety benefits.

An example of the grid size problem is the Miss Dig "one-call" system, which covers the State of Michigan. This system was existing for almost 10 years before § 192.614 was published and is generally recognized as effective. The

smallest geographical area in which Miss Dig's computer can identify operators is a city, incorporated village, or township (generally 36 mi.^{2}). One operator of a transmission line in Michigan, Consumers Power Company, recorded the instances of excavation notices requiring negative call-backs for a two-week period in April 1983. They ranged from a low of 15 to a high of 136 daily from various teletype receiving stations.

In addition to the grid size problem, the negative call-back feature of § 192.614(b)(4) has had other undesirable consequences in connection with "one-call" systems. When an excavator receives a call from one, but not the only, gas operator in an area saying it has no pipelines in the area, the excavator may erroneously assume that there are not any gas pipelines near the excavation site. Also, some operators have avoided joining "one-call" systems with large grid sizes and, instead, chosen to conduct independent programs. While independent programs are permissible, RSPA believes damage prevention programs that involve participation in "one-call" systems are preferable in most cases.

Discussion

The purpose of requiring operators to contact persons who give excavation notices was stated in the preamble to the final rule:

> [P]ersons planning to engage in excavation activities should be told before such activities begin whether there are pipelines in the area and if so, the type of temporary marking that is to be provided and when the marking will be completed. Giving out this information early in the process should deter excavators from forging ahead with the work should they feel a 'one-call' system has not been responsive to their calls. (47 FR 13822)

Thus, the theory behind § 192.614(b)(4) is that without preliminary communication from operators, excavators would become impatient and begin digging before any pipelines in the area are marked. The basis for this theory lies in those "one-call" system recognized as successful that require a definite response by operators to each notice of intent to excavate. Such response help prevent accidents by beginning preconstruction communication and planning between the parties involved.

The benefit of early communication is obvious when pipelines are in the area of intended excavation. But, if none exist in those areas, is pre-excavation communication between excavator and operator still of value? The only apparent benefit to giving negative responses is to keep excavators interested in the programs, lest they dig quickly or fail to call on the next occasion when pipelines may be in the area of excavation. This effect is unlikely, however, because each of the "One-call" systems in the U.S. specified a time frame (usually 1–3 days) within which participants must mark their underground utilities that might be affected by the proposed excavation. If the specified time elapses without any marking, excavators may reasonably assume that underground utilities do not exist in the area of intended excavation.

In addition, in most states underground utilities other than gas pipelines are not required to notify excavators when they have no facilities in the proposed excavation area. Comments are invited concerning the effectiveness of "one-call" damage prevention programs for utilities that do not notify excavators when there are not any underground facilities in the area.

In view of the undue burden and undesirable consequences of the negative call-back feature of § 192.614(b)(4), RSPA is proposing to eliminate this feature from the rule. Section 192.614(b)(4) would be amended as set forth below. Under the proposed amended rule, operators still would have to provide notification to excavators if the operator has a pipeline in the area of intended excavation.

Classification

Since this proposed rule will have a positive effect on the economy of less than $100 million a year, will result in cost savings to consumers, industry, and government agencies, and no adverse impacts are anticipated the proposed rule is not "major" under Executive Order 12291. Also, it is not "significant" under Department of Transportation procedures (44 FR 11034). RSPA believes that the proposed rule will reduce the costs of damage prevention programs by reducing the number of telephone calls required by the current rule. However, this savings is not expected to be large enough to warrant preparation of a Draft Regulatory Evaluation.

Based on the facts available concerning the impact of this rulemaking action, I certify pursuant to section 605 of the Regulatory Flexibility Act that the action will not, if adopted as final, have a significant economic impact on a substantial number of small entities.

List of Subjects in 49 CFR Part 192

Pipeline safety, Damage prevention program.

PART 192—[AMENDED]

In view of the above, RSPA, proposes to amend Part 192 to Title 49 of the Code of Federal Regulations as follows:

1. The authority citation for Part 192 continues to read as set forth below:

Authority: 49 U.S.C. 1672; U.S.C. 1804; 49 CFR 1.53 and Appendix A of Part 1.

2. Section § 192.614(b)(4) would be revised to read as follows:

§ 192.614 Damage prevention program.

* * * * *

(b) * * *

(4) If the operator has a buried pipeline in the area of intended excavation activity, provide for actual notification to the person giving notice of intent to excavate of—

(i) The existence of that pipeline;

(ii) The type of temporary marking to be provided under paragraph (b)(5) of this section; and

(iii) How to identify the markings.

* * * * *

Issued in Washington, D.C. on November 27, 1985, under authority delegated by 49 CFR Part 106, Appendix A.

Robert L. Paullin,

Director, Office of Pipeline Safety.

[FR Doc. 85-28715 Filed 12-2-85; 8:45 am]

BILLING CODE 4910-60-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1039

[Ex Parte No. 346 (Sub-19)]

Boxcar Car Hire and Car Service

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: In response to an advance notice of proposed rulemaking, 49 FR 27333 (1984) the Commission proposes to adopt rules to govern its handling of boxcar car hire and car service. We propose to adopt a joint proposal submitted by the Consolidated Rail Corporation, Brae Corporation, Itel Rail Corporation, and the American Short Line Railroad Association, but request comments on other proposals that were submitted.

DATE: Comments are due January 2, 1986.

ADDRESS: An original and 15 copies of comments and replies referring to Ex Parte No. 346 (Sub-No. 19) must be sent to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

Comments and replies must also be served on all parties of record.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275–7245.

SUPPLEMENTARY INFORMATION: The text of the proposed rules is set forth in the Appendix to this notice. Additional information is contained in the Commission's decision. The decision contains a certification that the rules, as proposed, will not have a significant effect upon a substantial number of small entities; it invites those who propose modifications to discuss the extent, if any, to which the modifications would affect small entities. To obtain a copy of the full decision, write to Office of the Secretary, Room 2215, Interstate Commerce Commission, Washington, DC 20423, or call (202) 275–7428.

Decided: November 21, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley and Strenio. Commissioner Lamboley joined by Commissioner Strenio comments with a separate expression. Vice Chairman Gradison joined by Commissioners Andre and Strenio concurred with a separate expression.

James H. Bayne,

Secretary.

Appendix

PART 1039—[AMENDED]

1. The authority citation for 49 CFR Part 1039 is revised to read:

Authority: 49 U.S.C. 10321(a), 10505, and 11122, and 5 U.S.C. 553].

§ 1039.14 [Amended]

2. The title of 49 CFR 1039.14 is revised to read, "Boxcar transportation."

§ 1039.14 [Amended]

3. 49 CFR 1039.14(c) is revised to read as follows:

(c)(1) Except as provided in paragraph (c)(2) of this section, carriers are authorized to take the following actions with respect to boxcar equipment use:

(i) Assess charges for empty movement of cars where movements are made at the request of the car owner, the Association of American Railroads, or the Commission. The empty mileage charges is subject to a maximum of 35 cents per mile, as adjusted for inflation or deflation using the rail cost adjustement factors published periodically by the Commission in Ex Parte No. 290 (Sub-No. 2), *Railroad Cost Recovery Procedures*. In applying those factors, the figure of 35 cents will be treated as having been in effect on October 1, 1982.

(ii) Store empty cars and reclaim car hire payments beginning at the expiration of a 72-hour grace period after the care is made empty.

(iii) Negotiate bilateral agreements governing car hire rates, empty movements, and storage.

(2) As provided in this subsection, the authorization in paragraph (c)(1)(i) and (ii) of this section will not apply to excluded carriers nor will it apply to any boxcar which, on December 30, 1983, was owned or leased by a carrier which then would have qualified as an excluded carrier and which bears the reporting marks of an excluded carrier.

(i) An "excluded carrier" is a Class III carrier or a Class II carrier not affiliated with one or more Class I carriers. To be affiliated, the Class II carrier must be more than 50 percent owned by one or more Class I carriers.

(ii) The boxcar exclusion of paragraph (c) (2) of this section will apply:

(A) To an excluded boxcar whenever it is owned or leased by any Class III carrier and bears a Class III carrier's reporting marks; and

(B) to an excluded boxcar owned or leased by an excluded Class II carrier during a 4-year period beginning with the effective date of this rule, so long as such boxcar has not been otherwise owned or leased by another carrier during such 4-year period.

(iii) The exclusion will not apply during any period in which an excluded boxcar is leased or assigned to a Class I or affiliated Class II carrier. If an excluded Class II carrier becomes a Class III carrier within said 4-year period, that carrier will thereafter, for purposes of this rule, be treated as if it had been a Class II carrier on December 30, 1983.

(iv) Nothing in this paragraph will affect the right of any carrier to negotiate bilateral agreement governing car hire rates and rules.

(3) The hourly and mileage car hire rates in effect on January 1, 1985, as published in AAR Traffic Circular No. OT–10, for any boxcar excluded under paragraph (c) (2) of this section, will remain in effect without regard to the aging of such car subsequent to January 1 of the year of the service date of the final order promulgating this rule and any modification to the existing car hire formula will not apply to such car. Any improvements subsequent to January 1, 1985, to the excluded boxcars capitalized under OT–37 criteria or under rebuilt criteria will be subject to the same formula applicable to OT–37 or rebuilt cars under Ex Parte No. 334 or any other railroad car hire proceeding, including any efficiency ratio, if adopted.

(4) No freight rate made effective after April 1, 1985, that applies to traffic moving by boxcar and originating or terminating at an industry facility served physically by a Class III rail carrier may discriminate while these rules are in effect on the basis of (i) the ownership of the boxcar used or the reporting marks any such boxcar bears; (ii) the car hire rate applicable to the boxcar used; or (iii) any car hire discounts, in the form of reclaims or otherwise, available to any carriers with respect to the boxcar used. Except as prohibited above, carriers may use car ownership or car marks for identification purposes when establishing rates.

(5) The provisions of 49 U.S.C. 10705 and 10705a applicable to joint rates and through routes will be effective as to rates and routes applicable to boxcar traffic originating or terminating at an industry facility served physically by a Class III rail carrier.

[FR Doc. 85–28678 Filed 12–2–85; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 18

Marine Mammals; Reporting and Sealing Requirements for Alaskan Natives

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) hereby proposes to promulgate reporting and sealing regulations under section 109(i) of the Marine Mammal Protection Act of 1972, as amended, which allows Alaskan Natives to take polar bear, walrus and sea otter for certain specified purposes. This proposed action would implement a 1981 amendment to the Act which authorized the Secretary of the Interior to prescribe regulations requiring the reporting and sealing of marine mammals taken by Alaskan Natives for subsistence or handicraft purposes. The intended effect of this action is to assist the Service is monitoring the harvest of polar bear, walrus and sea otter, and in obtaining essential biological data needed to properly manage these marine mammal species or stocks. The action is also intended to help in controlling the illegal take, trade and transport of specified raw marine mammal parts.

DATES: Public comments must be submitted on or before March 3, 1986. Requests for public hearings must be submitted on or before January 2, 1986.

ADDRESSES: Written comments may be mailed or delivered in person to: Robert E. Gilmore, Regional Director, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503. Comments and materials received in response to this proposal will be available for public inspection at the above address during normal working hours of 8:00 a.m. 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Dr. Dale Taylor, Marine Mammal Project Leader, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503, telephone: (907) 786–3443.

SUPPLEMENTAL INFORMATION: The Marine Mammal Protection Act (MMPA or Act) of 1972 (16 U.S.C. 1361–1407) as amended, was enacted for the purpose of ensuring the long-term survival of marine mammals by establishing a Federal responsibility for their management and conservation. The Act imposed a general moratorium on the taking of marine mammals. However, under Section 101(b) it did allow the nonwasteful taking of marine mammals by Alaskan Natives for subsistence purposes or for purposes of creating and selling authentic native articles of handicrafts and clothing. The Act also assigned management responsibility to the Secretary of the Interior (Secretary), for the protection and conservation in Alaska of polar bear (*Ursus maritimus*), Pacific walrus (*Odobenus rosmarus divergens*) and northern sea otter (*Enhydra lutris lutris*) in addition to certain other marine mammals not found in Alaska and, therefore, not considered in this proposed rulemaking.

The Act specifically: (1) provided that Alaskan Natives could take marine mammals for subsistence purposes or for purposes of creating and selling authentic native articles of handicrafts and clothing if such taking was nonwasteful and the species was not depleted; and (2) provided further that the Secretary could, upon the determination that any species or stock of marine mammal subject to taking by Alaskan Natives was depleted, prescribe regulations upon such taking by Alaskan Natives.

The Congress, on October 9, 1981, amended the Act with the passage of Pub. L. 97–58 which, among other things, added section 109(i). This section authorized the Secretary, ". . . after providing notice thereof in the **Federal Register** and in newspapers of general circulation, and through appropriate electronic media, in the affected area and providing opportunity for a hearing thereon in such areas . . .," to prescribe regulations requiring the reporting and sealing of marine mammals taken pursuant to Section 101(b)—the Alaska Native exemption for subsistence and Native handicraft takings. The Service will notify the public of this proposed rule through the use of newspapers and electronic media in the affected areas. Requests for public hearings must be submitted to the Service's Alaska Regional Director (see Addresses Section above) within 30 days after this proposed rule appears in the **Federal Register**. This 30-day deadline for public hearing requests is provided in order to allow the Service sufficient time to schedule, organize and conduct hearings during the remainder of the 90-day comment period. Advance notice of any requested public hearing(s) will be published in the **Federal Register**. Both oral and written comments would be received at scheduled public hearings.

Section 109(i) was enacted to enable the Secretary to gather sufficient data on the taking and biology of marine mammals by Alaskan Natives to determine what effect such taking was having on these populations. It was also designed to provide the Secretary with a means of monitoring the disposition of the Native harvest to ensure that any commerical use of marine mammal products met the criteria set forth in section 101(b)(2) of the Act.

The Service recognizes that certain other taking of polar bear, walrus and sea otter is authorized by the Act (*e.g.*, unintentional take of small numbers of incidental to specified activities other than commercial fishing, take by permit for scientific research or public display), and regulations dealing with these provisions have already been implemented. The current action addresses no other provision for taking in the Act and no other regulation implementing such taking provisions. The proposed action deals only with the provision in the Act that exempts legal taking of polar bear, walrus and sea otter by Alaskan Natives under conditions already described. It will implement section 109(i) of the Act, as amended in 1981, by amending 50 CFR Part 18—Marine Mammals, Subpart C—General Exceptions, § 18.23—Native Exceptions, through the addition of paragraph (f)—Reporting and sealing.

Polar Bear

The current status of polar bear in Alaska has not been definitively determined but is believed to be stable, and possibly at a level lower than earlier predicted. Polar bears are well distributed throughout their historical range. Estimates by various researchers on the number of polar bears in Alaska range from a low of 3,000–5,000 to a high of 9,500. While the comparison of these various population estimates is not possible because they were derived by using different methods, it is generally agreed that the population currently appears to be stable and probably has not declined in recent years.

Under the Act, only Alaskan Natives are allowed to legally harvest polar bears for subsistence or handicraft purposes. At present, such taking can be done without regard to the number, age, sex, reproductive condition or times of year. Polar bears are generally taken when available throughout the fall, winter and spring season. Very few Alaskan Natives hunt specifically for polar bears; most animals are taken close to villages during the course of seal hunting or other activities.

Recent estimates on the number of polar bears taken are based on harvest surveys conducted by the Alaska Department of Fish and Game (ADF&G) through the 1979 harvest season and, most recently, by the Service. The data should be considered as representing the minimum harvest.

There is a growing concern that the Native take of polar bears without regard to the number, age, sex and time of year may have a significant adverse effect on the polar bear population in Alaska, and, even further, on the population in the Yukon Territory and the Northwest Territories of Canada since polar bear migration routes are known to cross the United States/Canada border. With their low reproductive rate (more than 3.5 years between litters with the average litter size being less than two), polar bears are extremely sensitive to overharvesting if uncontrolled killing of females is allowed to occur; current havests of up to 280 polar bears suggest that this may indeed be the case. However, conclusive proof in this regard may never be possible if current voluntary reporting of/by Natives on polar bear harvest is allowed to continue.

The ADF&G in a recent polar bear species account stated the problem as follows:

> It has become increasingly difficult to monitor the polar bear harvest since implementation of the MMPA. Before the MMPA, the State required hunters to present hides and skulls for examination and sealing and a tooth for age determination. The State continued to monitor the harvest after 1972, but the percentage of bears sealed became smaller each year as more hunters realized sealing was no longer required. Beginning in

1980, the U.S. Fish and Wildlife Service started to monitor the harvest fairly intensively, but estimates of total kill and composition of bears in the harvest are much less precise than with a mandatory sealing program.

Walrus

Although the walrus has been hunted for centuries by northern people, it is only in the last 100 years that the population has been affected by human exploitation. Estimates for the middle of the 19th century, prior to significant commercial exploitation, placed the total population of Pacific walrus at approximately 200,000 animals. A century of largely uncontrolled harvest reduced the population to near 100,000 by the late 1950's. Enactment and enforcement of regulations by the United States and the establishment of quotas by the USSR resulted in a dramatic increase in the walrus population during the last thirty years. While estimates are not pricise, recent 1980 surveys conservatively placed the population of Pacific walrus at approximately 275,000 animals. A survey five years earlier produced an estimate of about 200,000. Accurate comparisons of these estimates are not possible, but it is generally agreed that the population has increased significantly in the past two decades and may presently exceed the pre-exploitation levels of the mid-19th century, which presumably would reflect the long-term carrying capacity. There is concer that present population levels exceed the capacity of the environment to support them and that walrus are utilizing their food resources at or exceeding a desirable level. If this is the case and food resources become/are depleted, productivity would diminish and the population could enter a period of long-term decline.

The known retrieved 1984 Native harvest of walrus in Alaska (the USSR also allows the harvest of walrus) was 3,981 animals. However, the total American harvest (including unretrieved animals) is certainly higher for a number of reasons including the following: (1) Data are currently available only from Gambel, Savoonga, Nome, Little Diomede and Wales; (2) there is a considerable amount of illegal take of, and traffic in, ivory; and (3) a high number—estimates of 40–50 percent are not uncommon—of walruses taken by Natives are not retrieved. Because of the magnitude of the known current harvest by Alaskan Natives, probable declining rates of production, low confidence in population estimates, illegal take, and the unretrieved harvest, the Service is concerned that the total estimated level of Alaskan harvest (estimated at more than 10,000 animals, including retrieved and unretrieved, in 1984), coupled with the Soviet harvest, may be exceeding the annual sustainable yield of the Pacific walrus population. The proposed rule, if enacted, is expected to provide sufficiently reliable data to address these concerns.

Sea Otter

Sea otters in Alaska were commercially exported for over 150 years. These uncontrolled harvests reduced a once abundant and widely distributed species in Alaska to a point of near extinction before it was given Federal protection in 1911. By then, only a few remnant groups comprising about 2,000 animals survived where once, it is estimated, there had been 100,000 to 200,000 animals. The 1911 North Pacific Fur Seal Treaty afforded protection to sea otters from commercial harvests. Benefiting from protection efforts, with the present population estimated at between 150,000 and 200,000 animals, the species is still repopulating parts of its historical range through natural migration and transplants, and many subpopulations may be at or above historic levels.

Increases in subpopulations of sea otters, range expansions into areas also used by humans, and their ability to greatly reduce the abundance of sea urchins, mussels, clams, abalones, and dungeness crabs are causing a growing concern among recreational, commercial, and subsistence users of shellfish in some areas. Areas where otters are probably over-populated and competing with humans for the same shellfish resources are portions of the Aleutian Islands, the Kenai Peninsula and Prince William Sound. Other areas where the increase of sea otters is eventually expected to cause the same problem are the Kodiak Archipelago, the south side of the Alaska Peninsula, the north Gulf Coast and southeast Alaska. These are all areas where human populations are utilizing shellfish resources that otters prey upon, and conflicts and complaints can be expected to increase over time.

The problem of high numbers of sea otters in some subpopulations should serve to intensify competition between otters and humans. As animosity toward sea otters grows, illegal killing will likely increase. Other ecological impacts of sea otters are expected, but few have been documented. In some areas predation by sea otters has reduced invertebrate grazers and kelps have increased. Such predatory behavior with resulting alterations to the structure of the marine community will likely have pronounced long-term effects on sea otter populations.

Prior to passage of the Act in 1972, the State of Alaska maintained a continued closed season on sea otters except on an experimental basis. The MMPA removed this restriction and allowed the taking of sea otters by Alaskan Natives. In the absence of any harvest monitoring survey for sea otters, even crude estimates of the current level of legal take by Alaskan Natives are probably of little or no value for management purposes. However, biologists believe the take is relatively low but increasing as a result of an increased Native awareness that the species can be harvested for subsistence and handicraft purposes. The Service will reevaluate the sea otter reporting and sealing requirement after two years to determine if it is effective in obtaining the information needed to manage the population.

The Service believes that mandatory polar bear, walrus and sea otter reporting and sealing regulations must be established as herein proposed in order to accumulate needed harvest, population and biological data for these species. This information is essential if the Service is to make necessary and proper management decisions on a number of issues including: the level of Native harvest; habitat degradation resulting from excessive population levels; effects on populations due to oil, gas and other forms of development; and wildlife/human conflicts resulting from utilization/consumption of shellfish. Mandatory reporting and sealing should also provide valuable assistance in efforts to reduce illegal trade in raw marine mammal parts.

Description of the Proposed Rule

The regulations contained in 50 CFR Part 18 implement the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), as amended. Under the terms of this Act, the Secretary of the Interior is authorized to prescribe regulations requiring the reporting and sealing of polar bear, walrus and sea otter legally taken by Alaskan Natives for subsistence purposes or for purposes of creating and selling authentic Native articles of handicrafts and clothing. This proposed action will implement this reporting and sealing provision.

If implemented, this rule will require, no later than 30 days from the date of taking, the mandatory reporting and sealing of polar bear, walrus and sea otter, or specified parts thereof, legally taken by Alaskan Natives. Reporting will require that information concerning both the taking (location, method, etc.)

and biology (age, sex, etc.), of the marine mammal(s), or specified parts thereof, be provided to, or collected by, a Service employee or an authorized Service representative on approved forms provided by the Service. Sealing will require the actual attachment of an approved tag or other such marking device to the marine mammal(s), or specified parts thereof.

An exception to the 30-day reporting period is provided for the sealing of polar bear, walrus and sea otter, or specified parts thereof if taken between December 21, 1972 (the effective date of the Act), and the effective date of this regulation. The maximum 180-day period for sealing provided by this exception is intended to allow those Natives throughout Alaska in possession of specified raw marine mammal parts legally taken since enactment of the Act reasonable time to present said parts for sealing purposes. The retroactive effect of this provision is considered essential to reducing/controlling the illegal take, trade and transport of specified raw marine mammal parts. While the proposed provision requires that all previously harvested raw parts be presented for sealing purposes within 180 days upon implementation of this regulation, the Service considers unnecessary and unwarranted the requirements (1) that said parts from a given animal must accompany each other for sealing purposes and (2) that Alaskan Natives report information on sex, location and time of the take of such animal(s). Any data gathered from such requirements would be suspect and generally of little or no value for statistical purposes.

The purpose of the proposed rule is to povide harvest and biological data on marine mannals legally taken by Alaskan Natives to assist the Service in properly managing these species or stocks and to help in controlling the illegal take, trade transport of specified raw marine mammal parts.

The need for the proposed rule relates to the Act itself which exempted the nonwasteful taking, generally without restriction, of polar bear, walrus and sea otter by Alaskan Natives that dwell along the coast of Alaska. The Act limits the Department of the Interior, through the Service, in its authority to regulate this harvest until after a species or stock is found to be depleted. Current attempts to measure take of polar bear and walrus are inadequate. There is growing, unsubstantiated evidence of excessive take of female polar bears (with or without cubs) and walrus, while there is a near total void of information on the take of sea otters. Mandatory reporting and sealing is considered essential to improve the quality and quantity of data upon which future management decisions can be based.

Required Determinations

Based on a review and evaluation of the information contained in an Environmental Assessment conducted by the Service, it has been determined that this proposed regulation implementing a specific 1981 amendment to the Marine Mammal Protection Act concerning the reporting and sealing of certain marine mammals legally taken by Alaskan Natives is not a major Federal action which would significantly affect the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969. Accordingly, the preparation of an Environmental Impact Statement on this proposal is not required.

Based on the information contained in the Determination of Effects of Rule completed by the Service, the Department of the Interior has determined that this is not a major rule and does not require preparation of a regulatory impact analysis under Executive Order 12291. The primary additional cost will be incurred by the Federal Government and it will be less than $100,000 for sealing. Law enforcement costs will not exceed $565,000 to enforce the MMPA.

The Department has also determined and certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act. The only foreseeable economic impact resulting from the rule is travel expenses incurred by hunters to comply with the rule. Since the FWS will have sufficient representatives to conduct reporting and sealing activities, costs are not expected to be significant.

The Environmental Assessment and the Determination of Effects of Rule are on file and available for public inspection during regular business hours of 8:00 a.m. to 4:30 p.m. in the Office of Public Affairs, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503. Copies may also be requested in writing from this address.

The information collection requirements contained in this proposed regulation will be sent to the Office of Management and Budget for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) since there will be more than ten individuals reporting on an annual basis. The information to be collected is needed to assist the Service in monitoring the legal harvest of polar bear, walrus and sea otter, and in obtaining essential biological data needed to properly manage these marine mammal species or stocks. The information should also assist in controlling the illegal take, trade and transport of specified raw marine mammal parts. The information/labeling is mandatory to legally possess, transport or export marine mammals and their parts.

The author of this proposed rule is Jeffrey L. Horwath, Wildlife Biologist, Division of Wildlife Management, U.S. Fish and Wildlife Service, Washington, D.C. 20240.

List of Subjects in 50 CFR Part 18

Prohibitions, Marine mammals, Wildlife, Native exceptions, Permits.

PART 18—MARINE MAMMALS

1. The authority for 50 CFR Part 18 continues to read as follows:

Authority: Marine Mammal Protection Act of 1972, as amended (Pub. L. 92-522, 86 Stat. 1027; Pub. L. 97-58, 95 Stat. 979 (16 U.S.C. 1361-1407)).

2. It is further proposed to amend 50 CFR Part 18—Marine Mammals, Subpart C—General Exceptions, § 18.23 by adding paragraph (f)—Reporting and sealing, as follows:

§ 18.23 Native exceptions.

* * * * *

(f) *Reporting and Sealing.* (1) Notwithstanding the preceding provisions of this section, but subject to the provisions and conditions contained in this paragraph, no polar bear, walrus or sea otter, or specified parts thereof, legally taken by an Alaskan Native for subsistence purposes of for purposes of creating and selling authentic native articles of handicrafts and clothing may be possessed, transported within or exported from Alaska unless the animal(s) or specified parts thereof have been reported to, and properly sealed by, U.S. Fish and Wildlife Service personnel or an authorized Service representative; except that any Alaskan Native legally taking a polar bear, walrus or sea otter:

(i) May possess the unreported and unsealed animal(s) or specified parts thereof for a period of time not to exceed 30 days from the time of taking for the purpose of transporting to Service personnel or an authorized Service representative for reporting and sealing purposes; or

(ii) Shall tender immediately upon the request of Service personnel or an authorized Service representative the unreported and unsealed animal(s) or

specified parts thereof for reporting and sealing purposes; or

(iii) May posses the unsealed animal(s) or parts thereof for a period of time not to exceed 180 days from the effective date of this rulemaking for the purpose of transporting to Service personnel or an authorized Service representative for sealing purposes if the animal(s) or specified parts thereof were taken between December 21, 1972, and the effective date of this regulation. There is no reporting requirement for marine mammals covered by this paragraph (f)(1)(iii).

(2) In addition to definitions contained in the Act and 50 CFR 18.3, in this paragraph (f):

(i) The term "sealing" means the marking and tagging of marine mammals as specified in section 109(i) of the Act and refers to the actual physical attachment of an approved band or other such marking device to the skin and skull of polar bears, the tusks of walruses and the skin of sea otters; and

(ii) The term "reporting" means the collection by Service personnel or authorized Service representatives of biological data, harvest data and other such information regarding the taking of the marine mammal(s), the collection of which the Service determines to be necessary for management purposes. Reporting will be done on Service approval and provided "sealing" forms upon presentation for sealing purposes of the marine mammal(s) or specified parts thereof.

(3) Those parts of polar bear, walrus and sea otter that must be presented for reporting and sealing purposes are as follows:

(i) Polar bear—skin and skull;

(ii) Walrus—tusks;

(iii) Sea otter—skin.

(4) Representatives authorized to act as agents for reporting and sealing purposes in the absence of Service personnel will be as specified by the Service's Alaska Regional Director.

(5) Seals will be attached to the skins, skulls and tusks of the marine mammal(s) in such a manner as to maximize their longevity and minimize their adverse effects to the appearance of the specified parts that might result due to hindering the tanning or handicrafting of skins, or the handicrafting of tusks, or skulls.

(6) Seals for skins, skulls and tusks, will be provided by the Service. They will be numbered for accountability and such design, construction and materials so as to maximize their durability and longevity on the specified parts.

(7) Data collected pursuant to this paragraph will be maintained in the Service's Alaska Regional Office, Anchorage, Alaska.

(8) Pursuant to this paragraph (f), the following specific conditions and provisions apply.

(i) Reporting and sealing of polar bear or parts thereof.

(A) The skin and skull of the animal(s) must accompany each other when presented for reporting and sealing, except that the skin and skull of the animal(s) need not be presented together for sealing purposes if taken between December 21, 1972, and the effective date of this regulation.

(B) Except as provided in paragraph (f)(1)(iii) of this section, the following information must be reported by Alaskan Natives when presenting polar bear, or parts thereof, for sealing: sex of animal, date of kill, rifle caliber, location of kill, and transportation used.

(C) Both the skin and the skull will be sealed and a rudimentary pre-molar tooth will be removed from the skull and retained by Service personnel or an authorized Service representative.

(D) The skin and skull must be skinned out and unfrozen when presented for reporting and sealing.

(E) Seals must remain affixed to skins through the tanning process and until the skins have been severed into parts for garments, or other apparel or handicrafts.

(F) Authorized Service representatives for the reporting and sealing of polar bear skins and skulls will be available to residents located in, but not necessarily limited to, the villages of Kaktovik, Nuiqsut, Barrow, Wainwright, Pt Lay, Pt. Hope, Shishmaref, Brevig Mission, Wales, Gambell, Savoonga, Nome, Little Diomede, Emmonak, Teller, Kivalina and Kotzebue.

(ii) Reporting and sealing of walrus or parts thereof.

(A) The tusks of the animal(s) must accompany each other when presented for reporting and sealing, except that the tusks need not be presented together for sealing purposes if taken between December 21, 1972, and the effective date of this regulation.

(B) Except as provided in paragraph (f)(1)(iii) of this section, the following information must be reported by Alaskan Natives when presenting walrus, or parts thereof, for sealing: date of kill, sex of the animal taken, rifle caliber, location of kill, and transportation used.

(C) Seals must remain attached to the tusks until they have been crafted into a handicraft or for as long as is practicable during the handicrafting process.

(D) Authorized Service representatives for the reporting and sealing of walrus tusks will be available to residents located in, but not necessarily limited to, the villages of Gambell, Savoonga, Nome, Wales, Little Diomede, Mekoryuk, Hooper Bay, Togiak, Quionhagak, Kipnuk, Tannunak, Scammon Bay, Kotlik, Shaktoolik, Stebbins, Unalakleet, Koyuk, Teller, Brevig Mission, Shishmaref, Kivalina, Pt. Hope, Pt. Lay, Wainwright and Barrow.

(iii) Reporting and sealing of sea otter or parts therof.

(A) Except as provided in paragraph (f)(1)(iii) of this section, the following information must be reported by Alaskan Natives when presenting sea otter, or parts thereof, for sealing: date of kill, sex of the animal taken, rifle caliber, location of kill, and transportation used.

(B) The skin must be unfrozen when presented for reporting and sealing.

(C) Seals must remain affixed to skins through the tanning process and until the skins have been severed into parts for garments, or other apparel or handicrafts.

(D) Authorized Service representatives for the reporting and sealing of sea otter skins will be available to residents located in, but not necessarily limited to, the villages of Adak, Dutch Harbor, Unalaska, Akutan, Chignik Lagoon, Sand Point, King Cove, Cold Bay, Whittier, Seward, Cordova, Valdez, Yakutat, Seldovia, Homer, English Bay, Kodiak, Old Harbor, Larsen Bay, Port Lions, Sitka, Craig, Hydaburg, Hoonah, Angoon, Klawak, Metlakatla and Ketchikan.

(9) No person may falsify any information required to be set forth on the sealing form when the marine mammal(s) or specified parts thereof are presented for reporting and sealing purposes.

(10) Possession by any person of marine mammal(s) or specified parts thereof legally taken but in violation of the provisions and conditions of this paragraph is subject to punishment under the penalties provided for in section 105(a)(1) of the Act.

(11) The information collection requirements contained in this section 18.23(f) have been submitted to the Office of Management and Budget for approval under 44 U.S.C. 3501 *et seq.* The information is mandatory in order to have the marine mammal parts "sealed," thereby made eligible for continued lawful possession. Non-response may result in the Service determining the wildlife to be illegally possessed and subject the individual to penalties under this title.

Dated: November 7, 1985.

P. Daniel Smith,

Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85-28703 Filed 12-2-85; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 651

[Docket No. 51190-5190]

Northeast Multispecies Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule.

SUMMARY: NOAA issues and requests comments on this proposed rule to implement the conversion and management measures prescribed in the proposed Fishery Management Plan for the Northeast Multispecies Fishery (FMP). This FMP addresses problems identified in the multispecies finfish fishery by the New England Fishery Management Council and will replace the Interim Fishery Management Plan for Atlantic Groundfish. The proposed rule would (1) Establish new minimum sizes for seven major commercial species; (2) establish minimum sizes for recreationally-caught cod and haddock; (3) implement major extensions of closed spawning areas for haddock on Georges Bank; (4) establish a closed area in Southern New England to enhance yellowtail flounder spawning potential; (5) make major changes in the regulations governing small-mesh fisheries; (6) implement a major increase in the mesh size of mobile trawl gear; (7) establish a marking requirement for gill net gear, and (8) implement a seasonal mesh-size restriction for redfish to increase the spawning potential for redfish. The intended effect of the proposed rule is to maintain the abundance and viability of the stocks to support both commercial and recreational fisheries.

DATE: Comments on the proposed rule must be received on or before January 3, 1986.

ADDRESS: Comments on the proposed rule, the FMP, or supporting documents should be sent to Mr. Richard Schaefer, Acting Regional Director, National Marine Fisheries Service, Northeast Regional Office, 14 Elm Street, Gloucester, MA 01930-3799. Mark the outside of the envelope "Comments on the Multispecies FMP".

Copies of the FMP, the final environmental impact statement, and the draft regulatory impact review are available from Mr. Douglas G. Marshall, Executive Director, New England Fishery Management Council, Suntaug Office Park, 5 Broadway (Route 1), Saugus, MA 01906.

FOR FURTHER INFORMATION CONTACT: Peter Colosi (Groundfish Coordinator), 617-281-3600, ext. 252.

SUPPLEMENTARY INFORMATION:

Background

The Northeast Multispecies FMP was developed by the New England Fishery Management Council (Council) in consultation with the Mid-Atlantic Fishery Management Council. The Multispecies FMP has evolved from the Council's long-standing management efforts first begun in 1977 on cod, haddock, and yellowtail flounder in the original Atlantic Groundfish FMP and more recently the Interim Fishery Management Plan for Atlantic Groundfish. The Multispecies FMP was developed to replace the Interim Plan on the assumption that cod, haddock and yellowtail flounder are not isolated stocks, but are part of a highly complex and diversified fishery resource. As a result, the management unit encompasses the interrelated species of a demersal finfish complex, which includes cod, haddock, yellowtail flounder, pollock, redfish, winter flounder, American plaice, witch flounder, windowpane flounder, and white hake.

The goal of the Council in multispecies management is to preserve this mix of species at sufficient abundances to assure that the regulated species maintain adequate spawning potential, so that the resource, as a whole, can recover from outside influences, such as the pressure imposed by fishing. This goal is embodied in the major objectives of the Plan, which are (1) to control fishing mortality on juvenile fish (primarily) and on adults (secondarily) of selected finfish stocks to maintain sufficient spawning potential so that year classes replace themselves on a long-term average basis, and (2) to reduce fishing mortality in order to rebuild those stocks which have insufficient spawning potential to maintain a viable fishery resource. The objective promote greater egg production by controlling or reducing mortality on non-spawning, juvenile fish, thus allowing more fish to reach sexual maturity and produce before they are removed by the fishery.

The objectives are accomplished through several management measures designed to protect species within the multispecies complex. The Council believes that the measures implement conservation over and above that afforded by the Interim Plan. The measures are (1) minimum sizes for seven major commercial species; (2) minimum sizes for recreationally-caught cod and haddock; (3) major extensions of closed spawning areas for haddock on Georges Bank; (4) a closed area in Southern New England to enhance yellowtail flounder spawning potential; (5) major changes in the regulations governing small-mesh fisheries; (6) a major increase in the mesh size of mobile trawl gear; (7) a marking requirement for gill net gear, and (8) a seasonal mesh-size restriction for redfish to increase spawning potential.

The Council believes that these measures will ensure long-term abundance of the demersal finfish complex at levels that will support a viable fishery, and retain the fishing industry's traditional access to a multispecies fishery with a minimum of government regulation. This approach has been designed to be responsive to changing circumstances in the fishery, through the establishment of a Technical Monitoring Group (TMG). The TMG will conduct periodic analyses of changing conditions in the fishery resource, and make recommendations that will keep a continual focus on achievement of the plan's objectives. The plan is expected to be a framework on which to build to ensure effective management in the long term.

The Plan takes into account the willingness of fishermen to comply with changes in fishing regulations and the ability of the NMFS, the States, and the Coast Guard to enforce them. In summary, the Council believes that the plan (1) sets objectives that establish a standard against which success can be measured; (2) reconciles the tension between the need to respond to the condition of stocks within the resource complex and the limitations imposed by the multispecies industry by which those stocks are utilized; (3) takes into account NMFS' enforcement capability; and (4) represents a consensus position within the parameters of what is desirable, possible, and supportable at this stage in the evolution of fisheries management in New England.

The Secretary specifically requests comments on:

(1) The likelihood of overfishing considering the present condition of the stocks, the proposed management measures, and the spawning potential objectives of the FMP;

(2) The impact of the exempted fisheries program on the ability of the mesh-size conservation measures to achieve the Plan's spawning potential objective; and

(3) The enforceability of the management measures if no additional funds are available for enforcement.

One of the premises of the long-term calculation of the appropriate spawning stock is a constant level of fishing mortality. The number of otter trawl vessels has increased an average of 10 percent per year (1976–1983); 44 percent of the total of 302 vessels added to the fleet by 1981 were new and 169 were existing vessels which either switched gear, moved to New England, or were newly-acquired used vessels. Comment is specifically invited on the relationship of increased fishing pressure to the well-being of the fishery resource.

The exempted fisheries program allows the use of a mesh size smaller than the proposed regulated mesh for certain species and seasons throughout the fishing year. Comment is specifically invited on the impact of this program on the attainment of the plan's spawning potential objectives.

Preliminary estimates are that the enforcement costs for this FMP, if implemented, will increase from $13.3 million to at least $16.6 million annually, with little likelihood that additional funds will be available. Comment is specifically invited on the enforceability and effectiveness of closed areas if additional funding is not available.

Classification

Section 304(a)(1)(C)(ii) of the Magnuson Act, as amended, requires the Secretary of Commerce (Secretary) to publish regulations proposed by a Council within 30 days of receipt of a FMP and proposed regulations. At this time, the Secretary has not determined that the FMP these rules would implement is consistent with the national standards, other provisions of the Magnuson Act, and other applicable law. The Secretary, in making that determination, will take into account the information, views, and comments received during the comment period.

The Council prepared a draft environmental impact statement for this FMP; a notice of availability was published on October 24, 1985 (50 FR 43261).

The NOAA Administrator determined that this proposed rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. The proposed rule, including regulations for minimum fish size, minimum mesh size, exempted fisheries, closed areas, and a redfish area, may result in a maximum loss to the industry of $15.4 million (7.8 percent) and 950 man-years during the first year of implementation. The present cost (discounted at 10 percent) of the program (measured as foregone revenues) over a ten-year period is expected to be about $6.9 million (0.4 percent). The proposed gear marking requirements may result in a maximum annual cost of $100,000. An annual increase in the cost of enforcement is expected to be $3.3 million; however, enforcement may remain at current levels, if additional funding is unavailable. The purpose of the FMP is to enhance productivity and thus promote investment and innovation in the fishery once the industry has absorbed the initial losses. The proposed rule is not expected to have a significant adverse effect on the Northeast multispecies industry. The Council prepared a regulatory impact review (RIR) which concluded that this rule will produce long-term benefits associated with the achievement of the FMP objectives within the fourth year of implementation. A copy of this RIR may be obtained from the Council at the address above.

This proposed rule is exempt from the procedures of E.O. 12291 under section 8(a)(2) of that order. Deadlines imposed under the Magnuson Act, as amended by Pub. L. 97–453, require the Secretary to publish this proposed rule 30 days after its receipt. The proposed rule is being reported to the Director, Office of Management and Budget, with an explanation of why it is not possible to follow the regular procedures of the order.

A determination as to whether or not the rule has a significant economic impact on a substantial number of small entities will be made in conjunction with publication of the final rule.

This rule contains a collection of information requirement under the exempted fisheries program, which is subject to the Paperwork Reduction Act (PRA). A request to collect this information has been submitted to the Office of Management and Budget for review under section 3504(h) of the PRA. Comments should be directed to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for NOAA.

The Council has determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management programs of Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Maryland, Delaware, and North Carolina. This determination has been submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act.

List of Subjects in 50 CFR Part 651

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: November 27, 1985.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management National Marine Fisheries Service.

For the reasons set forth in the preamble, Chapter VI of 50 CFR is proposed to be amended by revising Part 651 to read as follows:

PART 651—NORTHEAST MULTISPECIES FISHERY

Subpart A—General Provisions

Sec.

651.1 Purpose and scope.
651.2 Definitions.
651.3 Relationship to other laws.
651.4 Vessel permits.
651.5 Recordkeeping and reporting requirements. [Reserved]
651.6 Vessel identification.
651.7 Prohibitions.
651.8 Facilitation of enforcement.
651.9 Penalties.

Subpart B—Management Measures

651.20 Regulated mesh area and gear limitations.
651.21 Closed areas.
651.22 Exempted fishery programs.
651.23 Minimum fish size.
651.24 Additional measures.
651.25 Experimental fishing.
651.26 Gear marking requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Subpart A—General Provisions

§ 651.1 Purpose and scope.

This part implements the Fishery Managment Plan for the Northeast Multispecies Fishery prepared and adopted by the New England Fishery Management Council in consultation with the Mid-Atlantic Fishery Management Council. These regulations govern the conservation and management of multispecies finfish.

§ 651.2 Definitions.

In addition to the definitions in the Magnuson Act, and unless the context requires otherwise, the terms used in this part have the following meanings:

Areas of custody means any vessels, buildings, vehicles, piers or dock facilities where finfish may be found.

Assistant Administrator means the Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration (NOAA), Department of Commerce, 3300 Whitehaven Street,

NW, Washington, DC 20235, or a designee.

Authorized officer means:

(a) Any commissioned, warrant, or petty officer of the U.S. Coast Guard;

(b) Any special agent of the National Marine Fisheries Service;

(c) Any officer designated by the head of any Federal or State agency which has entered into an agreement with the Secretary and the Commandant of the U.S. Coast Guard to enforce the provisions of the Magnuson Act; or

(d) Any U.S. Coast Guard personnel accompanying and acting under the direction of any person described in paragraph (a) of this definition.

Bottom-tending gill net means any gill net, anchored or otherwise, that is fished on or near the bottom in the lower third of the column.

Catch, take, or harvest includes, but is not limited to, any activity which results in killing any fish, or bringing any live fish aboard a vessel.

Charter and part boats means vessels carrying recreational fishing parties for a per capita fee or for a charter fee.

Cod end means the terminal portion of an otter trawl, pair trawl, beam trawl, Scottish seine, or mid-water trawl in which the catch is retained.

Exclusive Economic Zone (EEZ) means that area adjacent to the United States which, except where modified to accommodate international boundaries, encompasses all waters from the seaward boundary of each of the coastal States to a line on which each point is 200 nautical miles from the baseline from which the territorial sea is measured.

Exempted fisheries means those species found in the exempted fisheries program (§651.22).

Fishing means any activity, other than scientific research conducted by a scientific research vessel, which involves:

(a) The catching, taking or harvesting of fish;

(b) The attempted catching, taking or harvesting of fish;

(c) Any other activity which can reasonably be expected to result in the catching, taking or harvesting of fish; or

(d) Any operations at sea in support of, or in preparation for, any activity described in paragraph (a), (b) or (c) of this definition.

Fishing vessel means any vessel, boat, ship, or other craft which is used for, equipped to be used for, or of a type which is normally used for:

(a) Fishing; or

(b) Aiding or assisting one or more vessels at sea in the performance of any activity relating to fishing; including, but not limited to, preparation, supply, storage, refrigeration, transportation, or processing.

Land means to begin offloading fish, to offload fish or to transfer fish to another vessel.

Longline gear means fishing gear which is set horizontally, either anchored, floating, or attached to a vessel, which consists of a main or ground line with three or more gangions and hooks.

Magnuson Act means the Magnuson Fishery Conservation and Management Act, as amended (16 U.S.C. 1801 *et seq.*).

Mid-Atlantic area means that area west and south of a line commencing at 41°18'16.2"N. latitude by 71°54'28.5"W. longitude and proceeding South 37°22'32.75" East to the point of intersection with the outer boundary of the EEZ.

Mid-water trawl gear means pelagic trawl gear, no portion of which is operated in contact with the bottom.

Multispecies finfish means all finfish in the Northeast portion of the Atlantic EEZ not otherwise regulated under the Magnuson Act by international treaty or otherwise excluded by the management unit of the FMP. These species are: cod, yellowtail flounder, haddock, American plaice, pollock, redfish, witch flounder, white hake, and windowpane flounder.

New England area means that area east and north of a line commencing at 41°18'16.2"N. by 71°54'28.5"W. and proceeding South 37°22'32.75" East to the point of intersection with the outer boundary of the EEZ.

Official number means the documentation number issued by the U.S. Coast Guard or the registration number issued by a State or the U.S. Coast Guard for undocmented vessels.

Operator with respect to any vessel, means the master or other individual aboard and in charge of that vessel.

Owner with respect to any vessel, means:

(a) Any person who owns that vessel in whole or in part;

(b) Any charterer of the vessel, whether bareboat, time, or voyage;

(c) Any person who acts in the capacity of a charterer, including, but not limited to, parties to a management agreement, operating agreement, or other similar arrangement that bestows control over the destination, function, or operating of the vessel; or

(d) Any agent designated as such by any person described in paragraph (a),(b) or (c) of this definition.

Person means any individual (whether or not a citizen of the United States), corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State), and any Federal, State, local, or foreign government or any entity of any such government.

Recreational fishing means fishing for finfish which does not result in their barter, trade, or sale.

Recreational fishing vessel means any vessel from which no fishing other than recreational fishing is conducted. Party and charter boats are not considered recreational fishing vessels.

Regional Director means the Regional Director, Northeast Region, National Marine Fisheries Service, NOAA, or a designee.

Retain aboard means to fail to return to the sea after a reasonable opportunity to sort the catch.

Secretary means the Secretary of Commerce, or a designee.

Technical monitoring group (TMG) means that group of scientists/technical analysts which will report to the Council for the purposes of—(a) Monitoring the implementation of the FMP relative to achievement of the objectives, and (b) Making recommendations for changes in the management program.

U.S.—harvested fish means fish caught, taken, or harvested by vessels of the United States within any fishery regulated by a fishery management plan or preliminary fishery management plan implemented under the Magnuson Act.

Vessel of the United States means:

(a) Any vessel documented under the laws of the United States;

(b) Any vessel numbered in accordance with the Federal Boat Safety Act of 1971 (46 U.S.C. 1400 *et seq.*) and measuring less than 5 net tons; or

(c) Any vessel numbered under the Federal Boat Safety Act of 1971 (46 U.S.C. 1400 *et seq.*) and used exclusively for pleasure.

§ 651.3 Relationship to other laws.

(a) Fishing for squid, mackerel and butterfish, which is affected by these rules, also is governed by other domestic rules under Chapter VI, Title 50, Part 655 of the Code of Federal Regulations.

(b) Fishing vessel operators will exercise due care in the conduct of fishing activities near submarine cables. Damage to submarine cables resulting from intentional acts or from the failure to exercise due care in the conduct of fishing operations subjects the fishing vessel operator to the criminal penalties prescribed by the Submarine Cable Act (47 U.S.C. 21) which implements the International Convention for the Protection of Submarine Cables. Fishing vessel operators also should be aware that the Submarine Cable Act prohibts fishing operations at a distance of less than one nautical mile from a vessel

engaged in laying or repairing a submarine cable; or at a distance of less than one quarter nautical mile from a buoy or buoys intended to mark the position of a cable when being laid or when out of order or broken.

(c) Nothing in these regulations will supersede more restrictive State or local multispecies finfish management measures.

§ 651.4 Vessel permits.

(a) *General.* (1) Any vessel of the United States fishing for multispecies finfish, except commercial vessels fishing exclusively within State waters and recreational fishing vessels, must have a permit required by this part aboard the vessel.

(2) Vessel owners or operators who apply for a fishing vessel permit under this section must agree as a condition of the permit that the vessel's fishing, catch, and pertinent gear (without regard to whether such fishing occurs in the EEZ or landward of the EEZ and without regard to where such fish or gear are possessed, taken, or landed) will be subject to all the requirements of this part. All such fishing, catch, and gear will remain subject to any applicable State or local requirements. If a requirement of this part and conservation measure required by State or local law differ, any vessel owner or operator permitted to fish in the EEZ must comply with the more restrictive requirement.

(b) *Application.* (1) An application for a fishing vessel to participate in the multispecies finfish fishery must be submitted and signed by the vessel owner on an appropriate form which may be obtained from the Regional Director. The application should be submitted to the Regional Director at least 2 months prior to the date on which the applicant desires to have the permit made effective to ensure that he will receive the permit on time.

(2) Applicants must provide all of the following informaiton:

(i) The name, mailing address, and telephone number of the applicant and the vessel's master;

(ii) The name of the vessel;

(iii) The vessel's official number;

(iv) The home port and gross tonnage of the vessel;

(v) The engine horsepower of the vessel;

(vi) The approximate fish-hold capacity of the vessel in pounds;

(vii) The type of fishing gear used by the vessel; and

(viii) The size of the crew, which may be stated in terms of a range.

(c) *Issuance.* (1) Upon receipt of a completed application, the Regional Director will issue a permit within 45 days.

(2) Upon receipt of an incomplete or improperly executed application, the Regional Director will notify the applicant of the deficiency in the application. If the applicant fails to correct the deficiency within 21 days following the date of notification, the application will be discarded.

(d) *Surrender.* (1) A permit issued for a vessel may be surrendered by the owner thereof by certified mail addressed to the Regional Director.

(2) The Regional Director will reissue a permit which has been surrendered within 45 days from the date the reissuance was requested.

(e) *Expiration.* A permit expires when the owner or the name of the vessel changes.

(f) *Duration.* A permit is valid until it is voluntarily returned or expires or is revoked, suspended, or modified under 15 CFR Part 904.

(g) *Alteration.* Any permit which has been altered, erased, or mutilated is invalid.

(h) *Replacement.* Replacement permits may be issued. An application for a replacement permit will not be considered a new application.

(i) *Transfer.* Permits issued under this part are not transferable or assignable. A permit is valid only for the vessel for which it is issued.

(j) *Display.* Any permit issued under this part must be carried aboard the fishing vessel at all times. The permit must be displayed for inspection in the pilot house of the vessel or in another appropriate place.

(k) *Suspension and revocation.* Subpart D of 15 CFR Part 904 governs the imposition of sanctions against a permit issued under this part. As specified in Subpart D, a permit may be revoked, modified, or suspended if the vessel for which the permit is issued is used in the commission of an offense prohibited by the Magnuson Act or by this part; or if a civil penalty or criminal penalty imposed under the Magnuson Act is not satisfied.

(l) *Fees.* No fee is required for any permit under this part.

(m) *Change in application information.* Any change in the information specified in paragraph (b) of this section must be reported to the Regional Director within 15 days of the change.

(n) *Exempted fisheries program.* Any permit holder may initially request entry into the exempted fisheries program (§ 651.22) by telephoning 617–281–4454. The permit holder must give his/her name, vessel name, vessel permit number, the specific exemption requested, the starting date and estimated duration of participation in the program, and the area of operation. The permit holder must have the letter of authorization aboard at all times while he/she is engaged in an exempted fishery.

§ 651.5 Recordkeeping and reporting requirements. [Reserved]

§ 651.6 Vessel identification.

(a) *Official number.* Each fishing vessel subject to this part over 25 feet in length must display its official number on the port and starboard sides of the deckhouse or hull and on an appropriate weather deck so as to be visible from above.

(b) *Numerals.* The official number must be permanently affixed to each vessel subject to this part in contrasting block Arabic numerals at least 18 inches in height for vessels over 65 feet in length, and at least 10 inches in height for vessels over 25 feet in length. The length of a vessel, for purposes of this section, will be that length set forth in U.S. Coast Guard or State records.

(c) *Duties of operator.* The operator of each vessel subject to this part will:

(1) Keep the vessel's name and official number clearly legible and in good repair; and

(2) Ensure that no part of the vessel, its rigging, its fishing gear, or any other object obstructs the view of the official number from an enforcement vessel or aircraft.

(d) *Nonpermanent markings.* Vessels carrying fishing parties on a per capita basis or by charter must use markings that meet the above requirements, except for the requirement that they be affixed permanently to the vessel. The nonpermanent markings must be displayed in conformity with the above requirements when the vessel is fishing for multispecies finfish.

§ 651.7 Prohibitions.

(a) It is unlawful for any person owning or operating a vessel issued a permit under § 651.4 to do any of the following:

(1) Land or possess any multispecies finfish which fails to meet the minumum sizes specified in § 651.23; and

(2) Fail to affix and maintain permanent markings as required by § 651.6.

(b) It is unlawful for any person to do any of the following:

(1) Use any vessel of the United States (except recreational fishing vessels) for taking, catching, harvesting, or landing any multispecies finfish taken from the EEZ unless the vessel or operator has a

valid permit issued under this part and the permit is aboard the vessel;

(2) Fish within the large-mesh area specified in § 651.20(a) with nets smaller than the minimum size specified in § 651.20(b) unless the vessel is registered in an exempted fisheries program established under § 651.22;

(3) Fish in either area specified in § 651.21 during a period in which that area is closed, unless allowed by that section;

(4) Dump the contents on the net after being signaled by an authorized officer that the vessel is to be boarded.

(5) Possess, have custody or control of, ship transport, offer for sale, sell, purchase, land, or export any multispecies finfish taken, retained or imported in violation of the Magnuson Act, this part or any other regulation under the Magnuson Act;

(6) Import regulated species which are inconsistent with § 651.23;

(7) Make any false statement in connection with an application under § 651.4 or fail to report to the Regional Director, within 15 days, any change in the information contained in a permit application for a vessel;

(8) Make any false statement, oral or written, to an authorized officer, concerning the taking, catching, harvest, landing, purchase, sales, or transfer of any multispecies finfish.

(9) Refuse to permit an authorized officer to board a fishing vessel or to enter an area of custody, subject to such person's control, for purposes of conducting any search or inspection in connection with the enforcement of the Magnuson Act, this part, or any other regulation or permit under the Magnuson Act.

(10) Forcibly assualt, resist, oppose, impede, initimidate, threatened, or interfere with any authorized officer in the conduct of any search or inspecion described in paragraph (b)(5) of this section;

(11) Resist a lawful arrest for any act prohibited by this part;

(12) Interfere with, delay, or prevent, by any means, the apprehension or arrest of another person, with the knowledge that such other person has committed any act prohibited by this part;

(13) Interfere with, obstruct, delay, or prevent by any means the lawful investigation or search in the process of enforcing this part;

(14) Fail to comply immediately with enforcement and boarding procedures specified in § 651.8;

(15) Transfer directly or indirectly, or attempt to so transfer, any U.S.-harvested multispecies finfish not otherwise specifically authorized under § 651.26 to any foreigh fishing vessel within the EEZ; or

(16) Violate any provisions of the exempted fisheries program specified in § 651.22.

(c) It is unlawful to violate any other provision of this part, the Magnuson Act, or any regulations or permit issued under the Magnuson Act.

(d) *Presumption.* The possession of multispecies finfish which do not meet the minimum sizes specified in § 651.23 for sale will be *prima facie* evidence that such multispecies finfish were taken or imported in violation of these regulations. Evidence that such fish were harvested by a vessel fishing exclusively within State waters will be sufficient to rebut the presumption. This presumption does not apply to fish being sorted on desk.

(e) *Dumping.* No person, having been signaled by an authorized officer, will dump on board or into the water the contents of the net before the authorized officer has permitted the net to be emptied.

§ 651.8 Facilitation of enforcement.

(a) *General.* The operator of, or any other person aboard any fishing vessel subject to this part must immediately comply with instructions and signals issued by an authorized officer to stop the vessel and with instructions to facilitate safe boarding and inspection of the vessel, its gear, equipment, fishing record (where applicable) and catch for purposes of enforcing the Magnuson Act and this part.

(b) *Communications.* (1) Upon being approached by a U.S. Coast Guard vessel or aircraft or other vessel or aircraft with an authorized officer aboard, the operator of a fishing vessel must be alert for communications conveying enforcement instructions.

(2) If the size of the vessel and the wind, sea, and visibility conditions allow, loudhailer is the perferred method for communicating between vessels. If use of a loudhailer is not practicable, and for communications with an aircraft, VHF-FM or high frequency radiotelephone will be employed. Hand signals, placards, or voice may be emploted by an authorized officer and message blocks may be dropped from an aircraft.

(3) If other communications are not practicable, visual signals may be transmitted by flashing light directed at the vessel signaled. Coast Guard units will normally use the flashing light signal "L" as the signal to stop.

(4) Failure of a vessel's operator to stop his vessel when directed to do so by an authorized officer using loudhailer, radiotelephone, flashing light signal, or other means constitutes *prima facie* evidence of the offense of refusal to allow an authorized officer to board.

(5) The operator of a vessel who does not understand a signal from an enforcement unit and who is unable to obtain clarification by loudhailer or radiotelephone must consider the signal to be a command to stop the vessel instantly.

(c) *Boarding.* The operator of a vessel directed to stop must

(1) Guard Channel 16, VHF–FM, if so equipped;

(2) Stop immediately and lay to or maneuver in such a way as to allow the authorized officer and his party to come aboard;

(3) Except for those vessels with a freeboard of four feet or less, provide a safe ladder, if needed, for the authorized officer and his party to come aboard;

(4) When necessary to facilitate the boarding or when requested by an authorized officer, provide a manrope or safety line, and illumination for the ladder; and,

(5) Take such other actions as necessary to facilitate boarding and to ensure the safety of the authorized officer and the boarding party.

(d) *Signals.* The following additional signals, extracted from the International Code of Signals, may be sent by flashing light by an enforcement unit when conditions do not allow communications by loudhailer or radiotelephone. Knowledge of these signals by vessel operators is not required. However, knowledge of these signals and appropriate action by a vessel operator may preclude the necessity of sending the signal "L" and the necessity for the vessel to stop instantly.

(1) "AA" repeated (. — . —),[1] is the call to an unknown station. The operator of the signaled vessel should respond by identifying the vessel by radiotelephone or by illuminating the vessel's identification.

(2) "RY–CY" (. — . — . — — — . — . —. — — means "You should proceed at slow speed, a boat is coming to you." The signal is normally employed when conditions allow an enforcement boarding without the necessity of the vessel being boarded coming to a complete stop, or, in some cases, without retrieval of fishing gear which may be in the water.

(3) "SQ3" (. . . — — . — . . . — —) means "You should stop or heave to: I am going to board you."

(4) "L" (. — . .) means "You should stop your vessel instantly."

[1] Period (.) means a short flash of light; dash (—) means a long flash of light.

§ 651.9 Penalties.

Any person or fishing vessel found to be in violation of this part will be subject to the civil and criminal penalty provisions and forfeiture provisions prescribed in the Magnuson Act, to 50 CFR Part 621 and 15 CFR Part 904 (Civil Procedures), and other applicable law.

Subpart B—Management Measures

§ 651.20 Regulated mesh area and gear limitations.

(a) The mesh sizes stated in paragraphs (b) and (c) of this section will apply to all vessels fishing within the areas bounded by straight lines (rhumb lines) in the order stated:

(1) The line drawn from the intersection of the outer boundary of the territorial sea, eastward along 41°35′ N. latitude to the intersection with 69°40′ W. longitude, then southward along 69°40′ W. longitude to the intersection of line LORAN C, 9960–Y–43500;

(2) Then eastward along LORAN C, 9960–Y–43500 to the intersection of line LORAN C, 5930–Y–30750;

(3) Then northeastward along LORAN C, 5930–Y–30750 to the point of intersection with the United States/Canada Maritime Boundary;

(4) Then northward along the United States/Canada Maritime Boundary demarcated by projection of a line through the coordinates:

(i) 40°27′05″ N., 65°41′49″ W.;

(ii) 42°31′08″ N., 67°28′05″ W.;

(iii) 42°53′14″ N., 67°44′35″ W.;

(iv) 44°11′12″ N., 67°16′46″ W.; and

(5) Then along the shoreward boundary of the regulated mesh area, which is the outer boundary of the territorial sea.

(6) The regulated mesh area described above is divided in two by a line drawn from the eastern shore of Cape Cod at the point of intersection of the outer boundary of the territorial sea, northward along 70°00′ W. longitude to 42°20′ N. latitude, 70°00′ W. longitude and then eastward along 42°20′ N. latitude to the point of intersection with the United States/Canada Maritime Boundary. The area north of this dividing line will be known as the Gulf of Maine regulated mesh area, and the area south of this line will be known as the Georges Bank regulated mesh area.

(b) *Trawl nets.* (1) *Diamond mesh.* Except as provided for in § 651.20 (d) and (e) and § 651.22, the minimum mesh size for any trawl net or scottish seine used by a vessel fishing in the mesh area described in paragraph (a) of this section is 5½ inches in the cod end in the Gulf of Maine regulated mesh area; and 5½ inches in the cod end in the Georges Bank regulated mesh area.

(2) *Square mesh.* Vessels may use square mesh which the Regional Director has certified to be equivalent in terms of haddock escapement to the mesh sizes specified in paragraph (b)(1) of this section.

(c) *Gill nets.* (1) Except as provided for in § 651.22, the minimum mesh size for any gill net used by a vessel fishing in the mesh area described in paragraph (a) of this section will be the same as that specified under paragraph (b) of this section.

(2) In other portions of the New England area not subject to minimum mesh size restrictions under paragraph (b) of this section, the mesh in bottom-tending gill nets must be the same as that in effect for the Georges Bank regulated mesh area during the months of November through February.

(d) *Redfish area.* The area defined below will be unregulated with respect to mesh size only beginning March 1 and ending either July 31 or when 3,500 metric tons (mt) of redfish have been landed within the calendar year, whichever occurs first. The redfish area is bounded by lines in the following order—

(1) The line drawn from the intersection of 42°20′ N. latitude with 60°40′ N. longitude, northward along 69°40′ W. longitude to the intersection with line LORAN C, 9960–S–25600;

(2) Then northeastward along LORAN C, line 9960–X–25600 to the intersection with 43°00′ N. latitude;

(3) Then eastward along 43°00′ N. latitude to the seaward boundary of the U.S. EEZ;

(4) Then southward along the seaward boundary of the U.S. EEZ to the intersection with 42°20′ N. latitude; and

(5) Then westward along 42°20′ N. latitude to the point of origin.

(e) *Mid-water gear.* (1) In the portion of the regulated mesh area where exempted fishing is prohibited under § 651.22, fishing for Atlantic or blueback herring, mackerel and squid may take place throughout the fishing year with cod end mesh sizes less than the regulated size, provided that mid-water trawl gear is used exclusively, and the bycatch of multispecies finfish is not greater than one percent by weight of all other fish aboard the vessel at the end of each fishing trip.

(2) In the closed area described for the Southern New England/Mid-Atlantic Region in § 651.21, fishing for herring, mackerel and squid with mid-water trawl gear may be permitted by the Regional Director subject to the stipulation that no regulated species may be retained aboard or landed.

(f) *Mesh measurements.* (1) Mesh sizes are measured by a wedge-shaped gauge having a taper of two centimeters in eight centimeters and a thickness of 2.3 millimeters, inserted into the meshes under a pressure or pull of five kilograms. The mesh size will be the average of the measurements of any series of 20 consecutive meshes. The mesh in the cod end will be measured at least 10 meshes from the lacings, beginning at the after-end and running parallel to the long axis.

(2) No fishing vessel may use any means or device, including, but not limited to, chafing gear, liners, or double nets, if it would obstruct the meshes of the cod end or otherwise diminish the size of the meshes of the cod end. However, canvas, netting, or other material may be attached to the under side of the cod end to reduce wear and prevent damage so long as no more than 50 percent of the meshes are obstructed. Net strengtheners may be attached to the cod end of trawl nets, providing such net strengtheners consist of mesh material similar to the material of the cod end and have a mesh size of at least twice the authorized minimum mesh size.

§ 651.21 Closed areas.

(a) *Georges Bank.* Except as allowed by paragraph (c) of this section, no person may fish within the following areas during the months of February through May.

(1) An area known as Closed Area I bounded by straight lines (rhumb lines) connecting the following coordinates in the order stated:

(i) 40°53′N. latitude, 68°53′W. longitude;

(ii) 41°35′N. latitude, 68°30′W. longitude;

(iii) 41°50′N. latitude, 68°45′W. longitude; and

(iv) 41°50′N. latitude, 69°40′W. longitude.

(2) An area known as Closed Area II bounded by three straight lines described as follows:

(i) A line originating at 41°15′N. latitude, 67°00′W. longitude, projected eastward along 41°15′N. latitude to the point of intersection with the United States/Canada Maritime Boundary;

(ii) A second line originating at 41°15′N. latitude, 67°00′W. longitude, projected northward along 67°00′W. longitude to the point of intersection with the United States/Canada Maritime Boundary; and

(iii) That portion of the United States/Canada Maritime Boundary that intersects with the lines described in paragraph (a)(2)(i) and (ii) of this section.

(3) *Exceptions.* Paragraphs (a)(1) and (2) of this section do not apply to:

(i) Longline vessels that fish with hooks having a gape of not less than 1.18 inches (30 mm), Closed Area I, only;

(ii) Pot gear designed and used to take lobsters; or

(iii) Dredges designed and used to take scallops.

(4) The Regional Director may open either or both Closed Areas I and II prior to the scheduled opening in May by notice in the **Federal Register**, if he determines that concentrations of spawning fish are no longer in the area(s).

(b) *Southern New England/Mid-Atlantic Region.* (1) Except as provided in § 651.20(d), and paragraph (b)(3) of this section, during a closure, no person may fish within the area bounded by straight lines (rhumb lines) in the order stated:

(i) The line drawn from the intersection of LORAN C, 9960–Y–43700 and 72°20′W. longitude southward along 72°20′W. longitude to the intersection with line LORAN C, 9960–Y–43500;

(ii) Then eastward along LORAN C, 9960–Y–43500 to the intersection with line 72°00′W. longitude;

(iii) Then northward along 72°00′W. longitude to the intersection with line LORAN C, 9960–Y–43600;

(iv) Then eastward along LORAN C, 9960–Y–43600 to the intersection with line 70°40′W. longitude;

(v) Then southward along 70°40′W. longitude to the intersection with line LORAN C, 9960–Y–43500;

(vi) Then eastward along LORAN C, 9960–Y–43500 to the intersection with line 69°40′W. longitude;

(vii) Then northward along 69°40′W. longitude to the intersection with line 40°50′N. latitude;

(viii) Then westward along 40°50′N. latitude to the intersection with line 70°30′W. longitude;

(ix) Then northward along 70°30′W. longitude to the intersection with line 41°00′N. latitude;

(x) Then westward along 41°00′N. latitude to the intersection with line LORAN C, 9960–Y–43750;

(xi) Then westward along LORAN C, 9960–Y–43750 to the intersection with line 72°00′W. longitude;

(xii) Then southward along 72°00′W. longitude to the intersection with line LORAN C, 9960–Y–43700; and

(xiii) Then westward along LORAN C, 9960–Y–43700 to the point of origin.

(2) The area defined in paragraph (b)(1) of this section will be regulated as follows—

(i) The portion of the area east of 71°30′W. longitude will close on March 1 of each year and the portion west of 71°30′W. longitude will close on April 1 of each year.

(ii) The entire area will be reopened by the Regional Director on or after May 1 of each year after the Regional Director has determined that the closure has achieved the 20 percent spawning potential for yellowtail flounder and winter flounder.

(3) *Exceptions.* (i) Paragraph (b)(1) of this section does not apply to—

(A) Pot gear designed and used to take lobsters; and

(B) Dredge gear designed and used to take scallops, ocean quahogs, or surf clams.

(ii) The Regional Director may permit the use of mid-water trawl nets with cod ends constructed of mesh less than the size prescribed in § 651.20(b) in the closed area described in § 651.21(b) to fish for herring, mackerel, and squid provided that the total amount of multispecies finfish taken does not exceed one percent of the weight of all other fish aboard the vessel at the end of each fishing trip.

(A) Upon final implementation of the Plan, the Regional Director will determine the allowable mesh that may be used in mid-water trawl nets within the closed area. Such determination will be published in the **Federal Register.**

(B) Any person intending to use mid-water trawl nets in any area described in paragraph (b) of this section must notify the Regional Director in writing 30 days prior to the date on which the nets will be used. The Regional Director will issue a letter authorizing the use of such nets. Fishing in these areas with mid-water trawl nets may not commence without a letter of authorization carried aboard the vessel.

§ 651.22 Exempted fishery programs.

(a) *General.* The Regional Director will establish and implement an exempted fishery program to allow fishing vessels to engage in small mesh fisheries for species which require the use of mesh smaller than the size specified in § 651.20(b). Exempted fishing may be conducted shoreward of the area bounded by the straight lines (rhumb lines) in the order stated—

(1) The line beginning at the intersection of the territorial sea and 41°35′N. latitude and proceeding eastward along 41°35′N. latitude to the intersection with line 69°40′W. longitude;

(2) Then northward along 69°40′W. longitude to the intersection with line LORAN C, 9960–X–25600;

(3) Then eastward along LORAN C, 9960–X–25600 to the intersection with the line demarking the U.S./Canadian boundary; and

(4) Then northward along the U.S./Canadian boundary line to the intersection with the territorial sea.

(b) *Entry.* (1) Any person holding a valid Federal multispecies finfish permit may apply to fish under the exempted fisheries program by following the procedrues set forth in § 651.4(n).

(2) The period of participation must be for at least 7 days, but not longer than 30 days. There is no limit on the number of times a vessel can apply to participate in the exempted fisheries program.

(c) *Certification.* (1) The Regional Directory will certify in writing the entry of the applicant into the exempted fisheries program. Entry may be denied to an applicant based upon previous violations of the Magnuson Act or these regulations. Any applicant denied entry into the program may request a hearing. The hearing will be conducted in accordance with the procedures of 15 CFR Part 904.

(2) Entry of the applicant into the exempted fisheries program cannot occur until the applicant receives written certification from the Regional Director.

(d) *Commencement of fishing.* Fishing under the exempted fisheries program may begin after the applicant has received the certification from the Regional Director provided that a letter of authorization is retained aboard the vessel and displayed for inspection in the pilot house of the vessel, or in another appropriate place.

(e) *Limitations.* (1) Participation in the exempted fisheries program is subject to seasonal limitations, exempted species, and maximum multispecies finfish percentage restrictions as follows:

Period	Exempt species	Comment
June to November	Open	Regulated special may not exceed 10 percent of the total landings of all species during the report period.
December to January	Whiting	Regulated species may not exceed 10 percent of the amount of whiting landed over the reporting period; the fishery will be monitored by sea sampling.
January to April	Shrimp	Regulated species may not exceed 10 percent of the amount of shrimp landed during the reporting period.
December to May	Herring, mackerel	Regulated species may not exceed 10 percent of the amount of herring plus mackerel landed over the reporting period.

(2) Adjustments in the seasons, species or percentages of the exempted fisheries will be accomplished in accordance with the procedures detailed in § 651.24(c).

(f) *Recordkeeping and reporting.* The reporting period for the exempted fisheries will be 30 calendar days. Within one week from the expiration of the reporting period or withdrawal from the program under paragraph (h) of this section, or receipt of a notice of revocation under paragraph (i) of this section, the participant must mail or deliver to the Regional Director a NOAA Form 88–153 "Fishing Vessel Record" listing or on business records that provide equivalent information, in pounds, all fish landed during participation in the exempted fishery program on a trip-by-trip basis. The participant must maintain trip landing records that are certified as accurate by both the buyer and seller for one year after his/her participation in the exempted fishery program. These forms must be supplied upon the request of the Regional Director to confirm the information presented in NOAA Form 88–153. Buyer certification may be satisfied by the buyer's signature on the trip record that is retained by the seller (vessel operator). The responsible fishing vessel owner or operator may maintain accurate trip-by-trip landings data on a form provided by the Regional Director.

(g) *Expiration or withdrawal.* Participation in the program expires at the end of the participation period under § 651.4(m), or when the owner's or vessel's name changes, or when a participant who has been duly operating in the program for at least 7 days notifies the Regional Director of his/her intent to withdraw from the program. Such withdrawal will be effective when the participant receives notice of the withdrawal from the Regional Director.

(h) *Revocation.* The Regional Director may end the participation of any applicant in the exempted fisheries program upon issuance of a notice of violation and assessment for violating any provisions of the program or the Magnuson Act. Notification will be in writing and take effect upon receipt by the participant. Any applicant whose certification is revoked may request a hearing. The hearing will be conducted in accordance with the procedures of 15 CFR Part 904.

§ 651.23 Minimum fish size.

(a) The minimum sizes (total length) for certain regulated finfish are:

(1) *Commercial.*

	Inches	
	Year 1	Year 2
Cod, haddock and pollock	17	19
Witch flounder (gray sole)	14	14
Yellowtail flounder, American plaice (dab)	12	12
Winter flounder (blackback)	11	11

(2) Recreation fishing vessels, charter and party boats, and individuals.

(i) Effective—Year 1: cod and haddock: 15 inches.

(ii) Effective—Years 2 & 3: cod and haddock: 17 inches.

(iii) Effective—Years 4 on: cod and haddock: 19 inches.

(b) The minimum lengths allowed by paragraph (a) of this section are measured on a straight line from the tip of the snout to the end of the tail.

§ 651.24 Additional measures.

(a) *Regulated mesh areas.* If fishing mortality for a key species is determined to jeopardize achievement of the management objectives, or if a new year class of haddock is jeopardized by the conduct of the fishery, then four additional options to control fishing mortality will be considered for Council action (no priority implied):

(1) Modify existing measures;

(2) Establish further time/area restrictions;

(3) Increase minimum fish size; or

(4) Increase mesh size.

(b) *Non-regulated mesh area.* If fishing mortality for key stocks not adequately protected by the regulated mesh area remains too high to achieve the plan objectives, then three additional options to further control fishing mortality will be considered for Council action using the regulatory amendment process (public hearings will be held):

(1) Close key fishing grounds in appropriate areas and times necessary to control fishing mortality;

(2) Increase minimum fish size; or

(3) Establish a minimum mesh size for all or part of the area during a specified period of the year.

(c) *Adjustment of management measures.*(1) The Council will establish a Multispecies Technical Monitoring Group (TMG). The TMG will meet at least annually or more often to evaluate the effectiveness of the Plan in meeting its objectives. The TMG will make its recommendations to the Council of alternative or additional measures including but not limited to the scope of those measures described in paragraphs (a) and (b) of this section.

(2) *Determination.* A Committee designated by the Council will review the recommendations of the TMG in consultation with industry advisors. The Council will consider the recommendations of the TMG and the Committee and the views of the industry advisors and will determine whether and what additional or alternative measures will be proposed to achieve the objectives of the Plan.

(3) *Public comment.* The Council will hold public hearings at appropriate times and places to allow interested persons an opportunity to be heard on the proposed changes to the FMP.

(4) *Procedure.* (i) *FMP amendment.* If the recommendations of the Council are outside the scope of paragraphs (a) and (b) of this section, the Council will commence the FMP amendment process.

(ii) *Regulatory amendment.* If the recommendations of the Council are within the scope of paragraphs (a) and (b) of this section and do not impose gear or area restrictions in the Mid-Atlantic area with which the Mid-Atlantic Fishery Management Council has not agreed, the Council will forward the recommendations to the Regional Director.

(A) The Regional Director will review the Council's recommendations, supporting rationale, public comments, and other relevant information. In the event the Regional Director rejects the recommendations, he will provide written reasons to the Council for the rejection and existing regulations will remain in effect until the issue is resolved.

(B) If the Regional Director concurs that the Council's recommendations are consistent with the goals and objectives of the FMP, the national standards, and other applicable law, the Regional Director will recommend that the Secretary publish a proposed rule in the **Federal Register** prior to the appropriate fishing year. A 30-day period for public comment will be afforded. The Secretary will consider all comments received and will publish a final rule, with revisions as may be required, within 30-days following the end of the public comment period.

§ 651.25 Experimental fishing.

The Secretary may authorize experimental fishing for the acquisition of information and data activities, not otherwise authorized by these regulations.

§ 651.26 Gear marking requirements.

(a) Bottom-tending fixed gear (gill nets and longlines) fishing for multispecies finfish must have the name of the owner or vessel, or the official number of that vessel, permanently affixed to any buoys, gill nets or longlines.

(b) Bottom-tending gill net or longline gear must be marked so that the westernmost end (meaning the half compass circle from magnetic south through west to and including north) of the gear displays a standard 12-inch tetrahedral corner radar reflector and a pennant positioned on a staff at least 6 feet above the buoy. The easternmost end (meaning the half compass circle from magnetic north through east to and including south) of the gear must display only the standard 12-inch tetrahedral radar reflector positioned in the same way.

(c) The maximum length of continuous gill nets must not exceed 6,600 feet between end buoys.

(d) In the Gulf of Maine large mesh area specified in § 651.20, sets of gill net gear which are of an irregular pattern or which deviate more than 30° from the original course of the set will be marked at the extremity of the deviation with an additional marker which must display two or more visable streamers and may either be attached to or independent of the gear.

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50 CFR Part 663

[Docket No. 51192-5192]

Pacific Coast Groundfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of preliminary fishery specifications; request for comment.

SUMMARY: The NMFS announces and requests comments on the preliminary 1986 specifications for groundfish taken in the fishery conservation zone and territorial waters off the coasts of Washington, Oregon, and California. These preliminary specifications estimate the acceptable level of biological catch as well as the optimum yield and its distribution among domestic and foreign fishing operations for groundfish species or species groups as required by the regulations implementing the Pacific Coast Groundfish Fishery Management Plan.

DATE: Comments on the preliminary specifications for 1986 must be received by December 18, 1985.

ADDRESSES: Send comments to Mr. Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE, BIN C15700, Seattle, WA 98115 or to Mr. E.C. Fullerton, Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, CA 90731.

FOR FURTHER INFORMATION CONTACT: R.A. Schmitten at 206-526-6150 or E.C. Fullerton at 213-548-2575.

SUPPLEMENTARY INFORMATION: OMB Control Number 0648-0114. The implementing regulations for the Pacific Coast Groundfish Fishery Management Plan (FMP) (47 FR 43974, October 5, 1982, and 49 FR 27518, July 5, 1984) state that management specifications for groundfish will be evaluated each calendar year, preliminary specifications will be published in the **Federal Register**, public comment will be requested, and final specifications for the succeeding calendar year will be published. The management specifications include the acceptable biological catch (ABC) for each groundfish species, an estimate of the annual catch that could be taken without jeopardizing a resource's productivity, and the optimum yield (OYs) for six species (Pacific whiting, sablefish, Pacific ocean perch, shortbelly rockfish, widow rockfish, and, north of 39° N. latitude, jack mackerel), which are based on socioeconomic as well as biological factors and thus are necessarily equal to the ABCs. The OYs for these six species are the maximum amounts of fish (in round weight) that may be taken and retained or landed each year from the fishery conservation zone (3-200 nautical miles) and the territorial sea (0-3 nautical miles) off Washington, Oregon, and California.

The OY for each of these six species comprises several components that will be reassessed near July 1. The domestic annual harvest (DAH), which consists of estimates of domestic annual processing (DAP) and joint venture processing (JVP), is verified by surveys in September and June of the needs of the domestic fishing and processing industries. The total allowable level of foreign fishing (TALFF) is the remainder, if any, of OY after domestic needs have been subtracted. Before TALFF is designated, a reserve of 20 percent of OY is established for each species in case the domestic industry needs more than was initially estimated.

The OYs and ABCs may be changed during the year, within limits, under the procedures outlined in § 663.22.

The Pacific Fishery Management Council (Council) reviewed and approved the preliminary specifications for the 1986 ABCs and OYs and received public comment at its September 18-19, 1985, meeting in Portland, Oregon. After the Council adopted the preliminary ABC specifications in September, updated biological analyses were received from the Council's Groundfish Management Team and released to the public by the Council. These analyses are considered to be the best available data at this time. The specifications presented below, based on these analyses, in some cases differ from the numbers of the Council recommended in September as preliminary estimates. In two cases (for Pacific whiting and yellowtail rockfish) the best available information supports increases greater than 30 percent above the 1985 ABC. However, regulations at § 663.24 state that OYs and ABCs may not be increased more than 30 percent in a calendar year. Accordingly, the specifications of OYs and ABCs for 1986 do not exceed the coastwide OYs and ABCs specified in 1985 by more than 30 percent.

The 1986 preliminary management specifications are listed in Tables 1 and 2, followed by a discussion of the specifications for each species with a numercial OY and any changes made to the 1985 ABC estimate. The agregate data upon which these preliminary specifications are based are available for public inspection at the Regional Directors' offices during business hours until the end of the comment period.

TABLE 1.—PRELIMINARY SPECIFICATIONS OF OY, DAP, JVP, DAH, RESERVE, AND TALFF FOR 1986

[Thousands of metric tons]

Species	OY	DAP	JVP[1]	DAH	Reserve	TALFF[1]
Pacific whiting	227.5	15.0	120.0	135.0	45.5	47.0
Sablefish	[2] 11.6	11.6	0.0	11.6	0.0	0.0
Pacific ocean perch	[2] 1.55	1.55	0.0	1.55	0.0	0.0
Shortbelly rockfish	10.0	1.0	5.0	6.0	2.0	2.0
Widow rockfish	9.3	9.3	0.0	9.3	0.0	0.0
Jack mackerel	12.0	0.0	0.0	0.0	2.4	9.6
Other species	(*).					

[1] In the foreign trawl and joint venture fisheries for Pacific whiting, incidental catch allowance percentages (based on TALFF) and incidental retention allowance percentages (based on JVP) are: sablefish 0.173%, Pacific ocean perch 0.062%, rockfish excluding Pacific ocean perch 0.738%, jack mackerel 3.0%, and other species 0.5%. In foreign trawl and joint venture fisheries, "other species" means all species, including non-groundfish species, except Pacific whiting, sablefish, Pacific ocean perch, rockfish excluding Pacific ocean perch, flatfish, jack mackerel, and prohibited species. In a foreign trawl or joint venture fishery for species other than Pacific whiting, incidental allowance percentages will be stated in the conditions and restrictions to the foreign fishing permit. See § 611.70(c)(2) for application of incidental retention allowance percentages to joint venture fisheries.

[2] Of this 11,600 metric tons is for the Monterey subarea. See § 663.21(a)(2).

[3] Of this 1,550 metric tons, 600 metric tons is for the Vancouver subarea and 950 metric tons is for the Columbia subarea. Pacific ocean perch from other subareas are included in the OY for "other species." See § 663.21(a)(3).

[4] The total OY for "other species" is that amount of fish that may be lawfully harvested and/or processed under § 611.70 and Part 663. See § 663.2 for species listing.

Pacific whiting. The ABC/OY for Pacific whiting has not been taken in the past eight years and the very strong 1977 and 1980 year classes have entered the fishery. Even though reproduction apparently has been poor since 1980, the potential yield of the stock currently is very high, about 300,000 metric tons (mt); this potential, however, will not be sustained over time.

The regulations at § 663.24 limit annual increases of ABC and OY to 30 percent above the previous year's level: the 1986 ABC for Pacific whiting is proposed to be 227,500 mt, 30 percent higher than in 1985. The Council has indicated it may consider an additional 30 percent increase in 1986.

As in 1985, ABC and OY are proposed to be equal in 1986. Shore-based processors indicate their intent to process more Pacific whiting than in 1985, and DAP is preliminarily estimated at 15,000 mt. The joint venture processing estimate is 120,000 mt, the same as in 1984 and 41 percent above the 1985 estimate. Accordingly, DAH is preliminarily estimated at 135,000 mt and initial TALFF at 47,000 mt. The reserve, which is established in case domestic industry needs more fish than originally projected, is set at 45,500 mt (20 percent of OY).

Sablefish. The 1986 preliminary ABC for sablefish is 10,600 mt, fourteen percent below the 1985 ABC of 12,300 mt. There is some indication of a strong influx of young fish into the fishery which could allow the fishery to operate in excess of MSY levels for a few years. However, there also are indications of an absolute decrease in numbers of medium- and large-sized fish. Accordingly, the 1986 OY is proposed to be set at 11,600 mt, 10 percent above ABC, the same proportion as in 1985. Because the shore-based industry intends to proces all available sablefish, none is available for joint venture or foreign fishing in 1986 except for minimal allowances for unavoidable incidental catches.

An ABC and OY of 2,500 mt for sablefish in the Monterey Bay subarea have been in effect since 1982. However, it has not been possible to identify (from available landings data) which fish were caught in this area. As a result, no ABC is proposed for the Monterey Bay area in 1986. Because an amendment to the FMP is required to remove the OY for Monterey Bay, the 2,500 mt OY is proposed to be maintained for this area until the issue is fully considered in the amendment process.

Pacific ocean perch. Pacific ocean perch have been overfished and are managed under the rebuilding schedule specified in the FMP. The rebuilding schedule sets OY at 600 mt in the Vancouver area and 950 mt in the Columbia area. Domestic processors will fully utilize OY so there are no Pacific ocean perch available for joint venture or foreign fishing in 1986 except for minimal allowances for unavoidable incidental catches.

Shortbelly rockfish. The preliminary 1986 ABC and OY estimates for shortbelly rockfish are both 10,000 mt, the same as in 1983–1985. A DAP of 1,000 mt as indicated by the year-end survey should supply shore-based processing needs adequately, and 5,000 mt is estimated for joint venture processing in 1986. The remaining 4,000 mt is split into 2,000 mt for foreign fishing and a 2,000 mt reserve in case domestic needs become higher than initially estimated. Most shortbelly rockfish are available south of 39° N. latitude, in an area closed to foreign trawling, and no interest has been expressed in a directed foreign fishery for this species north of 39° N. latitude in 1986.

Widow rockfish. The preliminary 1986 coastwide ABC for widow rockfish is 9,300 mt, the same as in 1984 and 26 percent higher than in 1985. This increase resulted from lowering the estimate of fishing mortality which in turn increased estimates of MSY. The OY and ABC for widow rockfish are proposed to be equal in 1986. Because this species is fully utilized by domestic shore-based processors, no widow rockfish are available for joint venture or foreign fishing in 1986 except for minimal allowances for unavoidable incidental catches.

Jack mackerel (north of 39° N. latitude). The 1985 ABC and OY estimates for jack mackerel (both at 12,000 mt) are proposed to be maintained for 1986. No domestic interest was identified on the stock north of 39° N. latitude. Accordingly, a reserve of 2,400 mt is proposed along with 9,600 mt designated for foreign fishing in 1986.

TABLE 2.—PRELIMINARY ESTIMATES OF ABC FOR 1986 (METRIC TONS) FOR THE CALIFORNIA/WASHINGTON REGIONS BY INPFC AREAS

Species	Vancouver[1]	Columbia	Eureka	Monterey	Conception	Total
Roundfish:						
Lingcod	1,000	4,000	500	1,100	400	7,000
Pacific Cod	2,200	900	(2)	(2)	(2)	3,100
Pacific Whiting						[3] 227,500
Sablefish						10,600
Rockfish:						
Pacific Ocean Perch	600	950	(3)	(2)	(2)	1,550
Shortbelly						[3] 10,000
Widow						[3] 9,300
Other Rockfish:[4]						
Bocaccio	(2)	(2)	(2)	4,100	2,000	6,100
Canary	800	[5] 2,100	600	(2)	(2)	3,500
Chilipepper	(2)	(2)	(2)	1,300	1,000	2,300
Yellowtail	1,100	[5] 2,500	300	(2)	(2)	3,900
Remaining Rockfish	800	[5] 3,700	1,900	4,300	3,300	14,000
Flatfish:						
Dover Sole	2,400	11,500	6,000	5,000	1,000	27,900
English Sole						[3] 1,500
Petrale Sole	600	1,100	500	800	200	31,500
Other Flatfish (except arrowtooth flounder)	700	3,000	1,700	1,800	500	7,700

TABLE 2.—PRELIMINARY ESTIMATES OF ABC FOR 1986 (METRIC TONS) FOR THE CALIFORNIA/WASHINGTON REGIONS BY INPFC AREAS—Continued

Species	Vancouver[1]	Columbia	Eureka	Monterey	Conception	Total
Other Fish:[4]						
Jack Mackerel[3]						12,000
Others	2,500	71000	1,200	2,000	2,000	14,700

[1] U.S. portion.
[2] These species are not common or important in the areas footnoted. Accordingly, for convenience, Pacific cod is included in "Other" category for the areas footnoted and rockfish species are included in the "Remaining Rockfish" category for the areas footnoted only.
[3] Total all areas.
[4] "Other rockfish" means rockfish species at § 663.2 as amended, which do not have a numerical OY.
[5] For management of the *Sebastes* complex of rockfish, the Columbia area is split into northern and southern parts at Coos Bay, Oregon (43°22'N. latitudes), and ABCs for the Columbia area are prorated as follows:

	Columbia area (total)	North of Coos Bay	South of Coos Bay
Canary	2,100	1,700	400
Yellowtail	2,500	2,400	100
Remaining Rockfish	3,700	3,300	400

[6] "Other fish" includes sharks, skates, ratfish, morids, grenadiers, jack mackerel, arrowtooth flounder, and, in the Eureka, Monterey, and Conception area, Pacific cod. "Other fish" is part of the "other species" category listed at § 663.2.
[7] North 39° N. latitude.

The other species managed under the FMP do not have numerical OYs. For the most part, they cannot be harvested selectively and, unless biological stress is documented, are not regulated by quotas. Full utilization by domestic processors of some species in the multispecies complex precludes joint venture or foreign targeting on underexploited species because large incidental catches of the fully utilized species are likely to result. Consequently, no numerical specifications for DAH, DAP, JVP, and TALFF are made because JVP and TALFF are not available for any species in the multispecies complex. However, ABCs are specified for the major species or species groups.

Only one change in ABC from 1985 is proposed in this multispecies complex, for yellowtail rockfish. The best available data indicate that ABC should be 1,100 mt in the Vancouver area (up from 600 mt) and 2,600 mt in the Columbia area (up from 2,100 mt). (No change to the Eureka area ABC of 300 mt is proposed.) The coastwide ABC then would be raised to 4,000 mt in 1986 from 3,000 mt in 1985. However, the 1986 ABC for yellowtail rockfish may not exceed 3,900 mt, 30 percent above the 1985 coastwide ABC. Accordingly, the ABCs for the Vancouver and Columbia areas were adjusted, maintaining the same relative contribution to the 3,900 mt ABC as to the 4,000 mt estimate. The full 100 mt reduction (necessary to stay within the 3,900 mt coastwide maximum ABC) is taken from the Columbia area, resulting in an ABC of 2,500 mt for that area.

The change in ABC for yellowtail rockfish has implications for management of the *Sebastes* complex of rockfish (all rockfish caught off Washington, Oregon, and California except Pacific ocean perch, widow, shortbelly, and idiot rockfishes). Northern and southern trip limits were assigned to this complex in prior years to keep landings of species from the northern area within a designated annual "harvest guideline" (the sum of the species ABCs in 1985), and to minimize a shift in fishing effort to the southern area. In the past, the northern and southern areas were divided close to, or at, the southern boundary of the Columbia statistical area and the ABCs for that area were used to determine the harvest guideline. However, on September 1, 1985, the management line separating northern and southern trip limits for the *Sebastes* complex was moved 30 miles north (from Cape Blanco, Oregon, at 42° 50' N. latitude to Coos Bay, Oregon, at 43° 22' N. latitude), shrinking the northern area and making the ABC for the larger Columbia area inappropriate as a basis for determining the 1986 harvest guideline for the *Sebastes* complex in the smaller area north of Coos Bay. Therefore, the Columbia area ABC is divided into two additional estimates for species in the *Sebastes* complex caught either north or south of Coos Bay. (See footnote [5] to Table 2.)

The proposed 900 mt increase in the ABC for yellowtail in the Vancouver and Columbia area is offset by the 900 mt decrease in summed ABCs for the *Sebastes* complex which resulted from reducing the size of the northern management area. As a result, the summed 1986 ABCs for the *Sebastes* complex in the northern area remains at 10,100 mt as in 1985, despite the boundary change and the increase in the yellowtail ABC. The adjusted ABC for yellowtail rockfish north of Coos Bay in 1986 is therefore proposed to be 3,500 mt (1,100 mt for the Vancouver area and 2,400 mt for that portion of the Columbia area north of Coos Bay).

Classification

These preliminary specifications are made under the authority of and in accordance with 50 CFR Part 663. This action is in compliance with Executive Order 12291 and is covered by the Regulatory Flexibility Analysis prepared for the implementing regulations.

(16 U.S.C. 1801 *et seq.*)

List of Subjects in 50 CFR Part 663

Fisheries, Fishing.

Dated: November 27, 1985.

Carmen J. Blondin,

Deputy Assistant Administrator For Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 85-28722 Filed 11-27-85; 4:40 pm]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 50, No. 232
Tuesday, December 3, 1985

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Soil Conservation Service

Sistersville Elementary School Critical Area Treatment RC&D Measure Plan, West Virginia; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines, (40 CFR Part 1500); and the Soil Conservation Service Guidelines, (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Sistersville Elementary School Critical Area Treatment RC&D Measure, Tyler County, West Virginia.

FOR FURTHER INFORMATION CONTACT: Rollin N. Swank, State Conservationist, Soil Conservation Service, 75 High Street, Morgantown, West Virginia 26505 telephone 304–291–4151.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Rollin N. Swank, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The purpose of the measure is critical area treatment. The measure is designed to stabilize by regrading and shaping, and revegetating approximately 2.5 acres of land that has an average erosion rate of 43 tons per acre per year. Conservation practices include subsurface drains, diversions and seeding.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Rollin N. Swank, State Conservationist.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program. Office of Management and Budget Circular A–95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

Rollin N. Swank,

State Conservationist.

November 21, 1985.

[FR Doc. 85–28627 Filed 12–2–85; 8:45 am]

BILLING CODE 3410–16–M

COMMISSION ON CIVIL RIGHTS

Appointments of Individuals To Serve as Members of the Performance Review Board; Senior Executive Service; Correction of Previous Notice

The notice published, at column 2 of page 40043, in the **Federal Register** issue of Tuesday, October 1, 1985, (50 FR 40043) is corrected as follows:

(1) The name of Deborah Snow, Assistant Staff Director for Federal Civil Rights Evaluation, is deleted.

(2) The name of Bert Silver, Assistant Staff Director for Regional Programs, is added.

Susan Prado Morris,

Acting Staff Director.

[FR Doc. 85–28681 Filed 12–2–85; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Bureau of the Census

Service Annual Survey; Consideration

The Bureau of the Census hereby gives notice that we plan to conduct in 1986 the Service Annual Survey. This annual survey will be conducted under authority of Title 13, United States Code, sections 182, 224, and 225, and will collect data on the 1985 operating receipts of selected service industries, including hotels and motels; personal, business, automotive, and repair services; motion pictures and amusement services; health and legal services, engineering, architectural and surveying services; and accounting, auditing and bookkeeping services. This survey is a continuing and timely source of service operating receipts. Such a survey, if conducted, shall begin not earlier than December 31, 1985.

Information and recommendations received by the Bureau of the Census indicate that the data have significant application to the information needs of the public, the service industries, and governmental agencies, and that the data are not publicly available from nongovernmental or other governmental sources on a continuing basis.

The Bureau of the Census needs reports only from a selected sample of service firms operating in the United States, with probability of selection based on receipt size. The sample will provide, with measurable probability, statistics on the subject specified above.

Copies of the proposed forms and a description of the collection methods are available upon request to the Director, Bureau of the Census, Washington, DC 20233.

Any suggestions or recommendations concerning this survey will receive consideration if submitted in writing to the Director, Bureau of the Census, on or before December 20, 1985.

Dated: November 26, 1985.

John G. Keane,

Director, Bureau of the Census.

[FR Doc. 85–28677 Filed 12–2–85; 8:45 am]

BILLING CODE 3510–07–M

Foreign-Trade Zones Board

[Order No. 318]

Voluntary Termination of Foreign-Trade Subzone 46A, Evendale, OH

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), and the Foreign-Trade Zones Board Regulations (15 CFR Part 400), the Foreign-Trade Zones Board has adopted the following Order:

Whereas, on January 12, 1979, the Foreign-Trade Zones Board by Order No. 141 (44 FR 4003) issued a grant to the Greater Cincinnati Foreign-Trade Zone, Inc. (GCFTZ), grantee of Foreign-Trade Zone 46, authorizing, inter alia, the establishment of a special-purpose subzone at the General Electric jet engine plant in Evendale, Ohio, designated Foreign-Trade Subzone No. 46A;

Whereas, the GCFTZ advised the Board on July 19, 1985, that the company no longer requires zone procedures at its plant, and as a result requests voluntary relinquishment of the subzone; and,

Whereas, the request has been reviewed by the FTZ Staff and the Customs Service, and approval has been recommended;

Now, therefore, the Foreign-Trade Zones Board terminates the status of Subzone No. 46A effective this date.

Signed at Washington, DC, this 25th day of November 1985.

Foreign-Trade Zones Board.

William T. Archey,

Acting Assistant Secretary of Commerce for Trade Administration, Chairman, Committee of Alternates.

[FR Doc. 85-28719 Filed 12-2-85; 8:45 am]

BILLING CODE 3510-DS-M

[Order No. 317]

Voluntary Termination of Foreign-Trade Subzone 41B, Manitowoc, WI

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 USC 81a–81u), the Foreign-Trade Zones Board has adopted in the following Order:

Whereas, on August 4, 1981, the Foreign-Trade Zones Board by Order No. 178 (47 FR 40718) issued a grant to the Foreign-Trade Zone of Wisconsin, Inc. (FTZW), grantee of Foreign-Trade Zone 41, authorizing, inter alia, the establishment of a special-purpose subzone at the Muskegon Piston Ring Company, Inc. in Manitowoc, Wisconsin, designated Foreign-Trade Subzone No. 41B;

Whereas, the FTZW advised the Board on April 26, 1985, that the company no longer requires zone procedures at its plant, and as a result requests voluntary relinquishment of the subzone; and,

Whereas, the request has been reviewed by the FTZ Staff and the Customs Service, and approval has been recommended;

Now, therefore, the Foreign-Trade Zones Board terminates the status of Subzone No. 41B effective this date.

Signed at Washington, DC, this 25th day of November 1985.

Foreign-Trade Zones Board.

William T. Archey,

Acting Assistant Secretary of Commerce for Trade Administration, Chairman, Committee of Alternatives.

[FR Doc. 85-28720 Filed 12-2-85; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

New England Fishery Management Council; Public Meeting/Public Hearing

Agency: National Marine Fisheries Service, NOAA, Commerce.

The New England Fishery Management Council will convene a public meeting and a public hearing, both on December 10, 1985, at the King's Grant Inn, Danvers, MA.

Public Meeting

From 9 a.m. to 4 p.m., for discussion of report by the enforcement, foreign fishing, United States/Canada, large pelagics, Atlantic salmon, coastal migratory and anadromous committees, as well as discuss other fishery management and administrative matters.

Public Hearing

From 1 p.m. to approximately 2:15 p.m., to discuss and allow additional public comment on Amendment #1 to the Lobster Fishery Management Plan (FMP) regarding the Council's proposal to provide the Regional Director of the National Marine Fisheries Service with authority to allow exemptions to the FMP's regulations and to close areas to lobster fishing with the concurrence of the New England Fishery Management Council, for the purpose of scientific research which might enhance understanding of the lobster resource or benefit the lobster fishery. For further information contact Douglas G. Marshall, Executive Director, New England Fishery Management Council, Suntaug Office Park, 5 Broadway (Route One), Saugus, MA 01906; telephone: (617) 231-0422.

Dated: November 27, 1985.

Joseph W. Angelovic,

Deputy Assistant Administrator for Science and Technology, National Marine Fisheries Service.

[FR Doc. 85-28725 Filed 12-2-85; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjusting Import Restraint Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Taiwan

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 on March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on December 2, 1985. For further information contact Eve Anderson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce (202) 377-4212.

Background

The bilateral agreement of November 18, 1982, as amended, concerning cotton, wool and man-made fiber textile products from Taiwan, provides, among other things, for percentage increases in certain categories during the agreement year for swing and/or shift, provided corresponding reductions in equivalent square yards are made in the specific limits or sublimits during the same agreement year. Pursuant to the terms of the agreement, as amended, the import restraint limits established for cotton duck in category 319 and for man-made fiber fishnets in Category 669pt. (only T.S.U.S.A. numbers 355.4520 and 355.4530) are being increased to 11,614,219 square yards and 1,118,994 pounds, respectively. The limit for man-made fiber handbags in Category 670pt. (only T.S.U.S.A. number 706.4140) are being reduced to 18,423,697 pounds to account for the swing amount applied to Category 669pt.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textiles Agreements.

November 27, 1985.

Commissioner of Customs,

Department of the Treasury,

Washington, DC 20229

Dear Mr. Commissioner: On December 21, 1984, the Chairman of the Committee for the Implementation of Textile Agreements, directed you to prohibit entry for consumption or withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in certain specified categories, produced or manufactured in Taiwan, and exported during the twelve-month period beginning on January 1, 1985 and extending through December 31, 1985, in excess of certain designated limits. The Chairman further advised you that the restraint limits are subject to adjustment.[1]

Effective on December 2, 1985, the directive of December 21, 1984 is hereby further amended to include adjusted restraint limits for the following categories:

Category	Adjusted 12-month restraint limit [2]
319	11,614,219 square yards.
669 pt.[3]	1,118,994 pounds.
70 pt.[4]	18,423,697 pounds.

[2] The limits have not been adjusted to reflect any imports exported after December 21, 1984.
[3] In Category 669, only T.S.U.S.A. numbers 355.4520 and 355.4530.
[4] In Category 670, only T.S.U.S.A. number 706.4140.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553 (a)(1).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-28603 Filed 12-2-85; 8:45 am]

BILLING CODE 3510-DR-M

[1] The agreement of November 18, 1982, as amended, concerning cotton, wool and man-made fiber textile products from Taiwan provides, in part, that: (1) Specific limits or sublimits may be exceeded by certain designated percentages, provided a corresponding reduction in equivalent square yards is made in one or more specific limits or sublimits during the same agreement period; (2) certain specific limits or sublimits may be increased for carryforward; (3) special shift may be applied to certain categories, provided and equal amount in square yards equivalent is deducted from designated categories; and (4) administrative arrangements or adjustments may be made to resolve problems arising in the implementation of the agreement.

DEPARTMENT OF DEFENSE

Department of the Air Force

Intent To Prepare an Environmental Impact Statement for a Proposed Military Operations Area (MOA) Near Lake Louise, AK

The United States Air Force is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed Military Operations Area (MOA) near Lake Louise, Alaska. The MOA would provide an additional low-level flight training area for US Air Force pilots stationed in Alaska. Primary users of the approximately 2,700 square mile area would be tactical fighter aircraft. The proposed MOA is west of Lake Louise, Alaska, and about 100 miles northeast of Anchorage, Alaska.

The proposed MOS would extend from 300 feet above ground level (AGL) to 8,000 feet mean sea level. Pilots would fly at both subsonic and supersonic speeds. The primary user of the MOA will be tactical fighter aircraft. Other fighter and trainer aircraft would also use the MOA. The use of the area is estimated to be up to 4400 sorties per year. Individual flights would last approximately 40 minutes, with most of that in higher altitudes. Supersonic flight will occur above 5,000 ft AGL. No guns or missiles would actually be fired in the MOA.

An integral part of this proposed project may require installing an Air Combat Maneuvering Intrumentation System (ACMI) within the proposed MOA. The ACMI includes a small master control station and seven unmanned remote stations scattered throughout the proposed MOA. The system would improve Air Force Pilot flight training by providing computer simulations and evaluations of combat maneuvers.

Alternatives to the proposed action that will be evaluated will include the use of previously existing MOAs, no action, and establishing a new MOA in a different location.

The Air Force will conduct public scoping. The details of the scoping process will be announced through local news media. The US Air Force invites comments and suggestions from all interested parties.

FOR FURTHER INFORMATION CONTACT: Lt. Col. T.G. Tilma, Chief, Public Affairs, HQ AAC/PA, Elmendorf AFB, AK 99506-5001, (907) 552-2226.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 85-28733 Filed 12-2-85; 8:45 am]

BILLING CODE 3910-01-M

DEPARTMENT OF EDUCATION

Magnet Schools Assistance Program

AGENCY: Department of Education.

ACTION: Application notice for noncompeting continuation projects for fiscal year 1986.

Applications are invited for noncompeting continuation projects under the Magnet Schools Assistance Program (MSAP).

Authority for this program is contained in Title VII of the Education for Economic Security Act, Pub. L. 98-277 (20 U.S.C. 4051-4062).

The program issues awards to eligible local educational agencies to assist them in the planning, establishment, and operation of magnet schools that are a part of an approved desegregation plan. A "magnet school" is defined by the Act as a school or education center that offers a special curriculum capable of attracting substantial numbers of students of different racial backgrounds.

Closing Date for Transmittal of Applications

To be assured of consideration for funding, applicants for noncompeting continuation awards should mail or hand deliver their applications on or before March 3, 1986.

If an application is late, the Department of Education may lack sufficient time to review it with other applications for noncompeting continuation awards and may decline to accept it.

Applications Delivered by Mail

An application sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Washington, DC 20202. Applications for the MSAP should be marked Attention: 84.165.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail.

Applications Delivered by Hand

An application that is hand delivered must be taken to the U.S. Department of Education, Application Control Center, Room 3635, Regional Office Building 3, 7th and D Streets SW, Washington, DC.

The Application Control Center will accept a hand delivered application between 8:00 a.m. and 4:30 p.m. (Washington, DC time) daily, except Saturdays, Sundays, and Federal holidays.

Program Information

The present recipients of MSAP awards are eligible to apply for the continuation of those awards. Under 34 CFR 280.33 the Secretary is authorized to approve the continuation of an existing MSAP award if the recipient of that award "is making satisfactory progress toward achieving the purposes of the program" and meets the conditions of 34 CFR 75.253(a).

Intergovernmental Review

On June 24, 1983, the Secretary published at 48 FR 29158–29168, implementing Executive Order 12372 entitled "Intergovernmental Review of Federal Programs." The regulations took effect September 30, 1983.

This program is subject to the requirements of the Executive Order and the regulations in 34 CFR Part 79. The objective of Executive Order 12372 is to foster an intergovernmental partnership and to strengthen federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

The Executive Order—

- Allows States, after consultation with local officials, to establish their own process for review and comment on proposed Federal financial assistance;
- Increases Federal responsiveness to State and local officials by requiring Federal agencies to accomodate State and local views or explain why those views will not be accommodated; and
- Revokes OMB Circular A–95.

Transactions with nongovernmental entities, including State postsecondary educational institutions and federally recognized Indian tribal governments, are not covered by Executive Order 12372. Also excluded from coverage are research, development, or demonstration projects that do not have a unique geographic focus and are not directly relevant to the governmental responsibilities of a State or local government within that geographic area.

The Magnet Schools Assistance Program is a new program, and States have not made a determination as to whether it will be included or excluded from review under the State review process. Therefore, immediately upon receipt of this notice, applicants that are governmental entities, including local educational agencies, must contact the appropriate State single point of contact to find out about and to comply with the State's process under the Executive Order. Applicants proposing to perform activities in more than one State should contact, immediately upon receipt of this notice, the single point of contact for each State and follow the procedures established in those States under the Executive Order. A list containing the single point of contact for each State is included in the application package for this program.

All comments from State single points of contact and all comments from State, areawide, regional, and local entities must be mailed or hand delivered by April 2, 1986, to the following address:

The Secretary, U.S. Department of Education, Room 4181, (84.165) 400 Maryland Avenue SW., Washington, D.C. 20202. (Proof of mailing will be determined on the same basis as applications.)

PLEASE NOTE THAT THE ABOVE ADDRESS IS NOT THE SAME ADDRESS AS THE ONE TO WHICH THE APPLICANT SUBMITS ITS COMPLETED APPLICATIONS. *DO NOT SEND APPLICATIONS TO THE ABOVE ADDRESS.*

Available Funds

While the Congress has not yet enacted a fiscal year 1986 appropriation for the Department of Education, the appropriation for MSAP is expected to be $75,000,000. No eligible local educational agency may receive more than $4,000,000 of that amount.

In fiscal year 1985, the Department awarded 44 grants for MSAP projects. These grantees are eligible to apply for fiscal year 1986 continuation awards.

These estimates do not bind the Department of Education to a specific number of grants or to the amounts of any grant unless that amount is otherwise specified by statute or regulations.

Application Forms

Application forms and program information packages are expected to be ready for mailing on January 15, 1986. They may be obtained by writing to the Magnet Schools Assistance Program Staff, U.S. Department of Education (Room 2023, FOB–6), 400 Maryland Avenue SW., Washington, DC 20202.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information package. However, the program information is only intended to aid applicants in applying for assistance. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or grantee performance requirements beyond those specifically imposed under the statute and regulations.

The Secretary strongly urges that applicants not submit information that is not requested.

(The application is approved under OMB Control Number 1810–0516.)

Applicable Regulations

Regulations applicable to this program include the following:

(a) Regulations governing the Magnet Schools Assistance Program, 34 CFR Part 280 published in the **Federal Register** on May 22, 1985 at 50 FR 21190.

(b) Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, 78, and 79.

FOR FURTHER INFORMATION CONTACT: For further information contact M. Patricia Goins, Division of Educational Support, U.S. Department of Education (Room 2023, FOB–6), Mail Stop 6264, 400 Maryland Avenue SW., Washington, D.C. 20202. Telephone: (202) 472–7960.

(20 U.S.C. 4051–4062)

Dated: November 26, 1985.

(Catalong of Federal Domestic Assistance Number 84.165, Magnet Schools Assistance Program)

Lawrence F. Davenport,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 85-28712 Filed 12-2-85; 8:45 am]

BILLING CODE 4000-01-M

Application for Transmittal of Applications for the National Institute of Handicapped Research and Demonstration Projects in Research Training for Fiscal Year 1986; Correction

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Application Notice for Transmittal of Applications for the National Institute of Handicapped Research and Demonstration Projects in Research Training for Fiscal Year 1986; Correction.

On November 26, 1985, an application notice was published at 50 FR 48739. The closing date was inadvertently omitted in the third column, first paragraph. It should read:

Closing Date for Transmittal of Applications

Applications for new awards must be mailed or hand-delivered on or before January 27, 1986.

FOR FURTHER INFORMATION CONTACT: For further information contact Ms. Gail Perry, National Institute of Handicapped Research, U.S. Department of Education, 400 Maryland Avenue, SW., Switzer Office Building, Room 3070, Washington, DC 20202. Telephone (202) 732–1138; deaf and hearing impaired may call (202) 732–1198 for TTY services.

Program Authority: (29 U.S.C. 762).

Dated: November 27, 1985.

(Catalog of Federal Domestic Assistance No. 84.133P, National Institute of Handicapped Research)

Madeleine Will,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 85–28711 Filed 12–2–85; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Conduct of Employees; Waiver Pursuant to Section 602(c) of the Department of Energy Organization Act (Pub. L. 95–91)

Section 602(a) of the Department of Energy Organization Act (Pub. L. 95–91, hereinafter referred to as the "Act") prohibits a "supervisory employee" (defined in section 601(a) of the Act) of the Department from knowingly receiving compensation from, holding any official relation with, or having any pecuniary interest in any "energy concern" (defined in section 601(b) of the Act).

Section 602(c) of the Act authorizes the Secretary of Energy to waive the requirements of section 602(a) in cases of exceptional hardship or where the interest is a pension, insurance, or other similarly vested interest.

Mr. Thomas F. Bechtel is under consideration for the position of Associate Director of the Office of Technical Management in the Morgantown Energy Technology Center of the Department of Energy. Mr. Bechtel has pecuniary interests in the General Electric Company that were created as a result of this employment by a wholly-owned subsidiary of the company, General Electric Environmental Services, Inc.

It has been established to my satisfaction that requiring Mr. Bechtel to divest his interests in General Electric would impose an exceptional hardship on him, and that the interests designated below are pension, insurance, or other similarly vested interests, within the meaning of section 602(c) of the Act, or are analogous thereto. Accordingly, I have granted Mr. Bechtel a waiver of the divestiture requirements of section 602(a) of the Act—

(1) For a period of 120 days after commencement of his employment by the Department, with respect to his interests in the General Electric Incentive Compensation Plan;

(2) For a period of 120 days after commencement of his employment by the Department, with respect to his interests in the General Electric Savings and Security Program;

(3) For a period of 120 days after commencement of his employment by the Department, with respect to stock of the General Electric Company obtained by him from the General Electric Incentive Compensation Plan or the General Electric Savings and Security Program in connection with the termination of his interests in such programs; and

(4) For the duration of his employment with the Department, with respect to his interests in the General Electric Pension Plan.

In accordance with section 208 of title 18, United States Code, Mr. Bechtel will be directed not to participate personally and substantially, as a Government employee, in any particular matter the outcome of which could have a direct and predictable effect upon the General Electric Company or any of its subsidiaries unless his supervisor and the Counselor agree that his financial interest in the particular matter is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect of him.

In addition, in accordance with subsections (a) and (b) of section 606 of the Department of Energy Organization Act, Mr. Bechtel will be directed not to participate—

(1) For a period of one year after terminating his employment with General Electric Environmental Services, Inc., in any Department proceeding in which the General Electric Company or any of its subsidiaries is substantially, directly, or materially involved, other than a rulemaking proceeding having a substantial effect on numerous energy concerns; and

(2) For a period of one year after commencing service in the Department, in any Department proceeding for which he had direct responsibility, or in which he participated personally and substantially, within the previous five years while in the employment of General Electric Environmental Services, Inc.;

unless the Secretary makes a written finding that the application of such prohibition would be contrary to the national interest.

Dated: November 26, 1985.

John S. Herrington,

Secretary of Energy.

[FR Doc. 85–28680 Filed 12–2–85; 8:45 am]

BILLING CODE 6450–01–M

National Coal Council, Open Meeting

Correction

In FR Doc. 85–27509 appearing on page 47584 in the issue of Tuesday, November 19, 1985, make the following correction:

In the first column under "Contact", the telephone number in the fourth line should read "301/353–2847".

BILLING CODE 1505–01–M

Economic Regulatory Administration

Proposed Consent Order With Bass Enterprises Production Co.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of proposed Consent Order and opportunity for pubic comment.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) announces a proposed Consent Order with Bass Enterprises Production Co. (Bass) and provides an opportunity for public comment on the terms and conditions of the proposed Consent Order.

DATE: Comments by January 2, 1986.

ADDRESS: Sent comments to: Sandra K. Webb, Director, Houston Office, Economic Regulatory Administration, U.S. Department of Energy, One Allen Center, Suite 610, 500 Dallas Street, Houston, Texas 77002.

FOR FURTHER INFORMATION CONTACT: Sandra K. Webb, Director, Houston Office Economic Regulatory Administration, U.S. Department of Energy, One Allen Center, Suite 610, 500 Dallas Street, Houston, Texas 77002. Copies of the Consent Order may be obtained free of charge by writing or calling this office (713/229–3715).

SUPPLEMENTARY INFORMATION: On November 7, 1985, the ERA executed a proposed Consent Order with Bass. Pursuant to 10 CFR 205.199J, ERA will receive written comments on the proposed Consent Order for thirty (30) days following publication of this Notice. The ERA may, after

consideration of the comments it receives, withdraw its acceptance and, if appropriate, attempt to negotiate a modification of the Consent Order or issue the Consent Order as signed.

I. Background

Bass Enterprises Production Co. (Bass) engaged in the production and sale of crude oil during the period June 1, 1979 through December 31, 1980. ERA audited Bass' compliance during this period with the Mandatory Petroleum Price and Allocation Regulations applicable to the production and sale of "newly discovered" crude oil. 10 CFR Part 212. As a result of this audit, disputes arose between Bass and DOE concerning Bass' compliance with applicable federal petroleum price regulations in its production and sale of "newly discovered" crude oil during the period covered by this Consent Order.

Bass and DOE each maintain that their respective positions on the legal issues underlying such disagreements are meritorious. However, to resolve the issues raised by the audit without further litigation, Bass and DOE would enter into this Consent Order. Bass would do so without admitting it has violated any provision of the Regulations. Except for those matters explicitly excluded therein, the Consent Order would resolve all administrative and civil judicial claims, demands, liabilities, or causes of action between DOE and Bass with respect to the matters and the time period covered by the audit.

The Consent Order

The proposed Consent Order has been entered into to resolve all civil and administrative disputes, claims and causes of action by DOE relating to Bass' compliance in its sales of "newly discovered" crude oil during the period of June 1, 1979 through December 31, 1980. Although Bass contends that in all respects it correctly construed and applied the applicable regulations, Bass has entered into this proposed Consent Order to avoid the expense of litigation and the disruption of business. DOE believes the Consent Order is in the public interest and provides a satisfactory resolution of the issues raised by its audit.

III. Refunds

Under the terms of the proposed Consent Order, within ten days of the effective date of the Consent Order, Bass will pay the sum of $1,679,352.37 to DOE. The monies will be deposited in a suitable account for ultimate disposition by DOE.

IV. Submission of Written Comments

Interested persons are invited to submit written comments concerning the terms and conditions of this Consent Order to the address given above. The ERA will consider all comments it receives by 4:30 p.m., local time, on the 30th day after the date of publication of this notice. Any information or data considered confidential by the person submitting it must be identified as such in accordance with the provisions of 10 CFR 205.9(f).

Issued in Houston, Texas, on November 14, 1985.

Sandra K. Webb,

Director, Houston Office, Economic Regulatory Administration.

[FR Doc. 85-28650 Filed 12-2-85; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. CP85-756-000, CP85-803-000, CP85-804-000, CP85-805-000, CP85-806-000, CP86-46-000, CP86-82-000]

Consolidated Gas Transmission Corp. and Texas Eastern Transmission Corp.; Intent To Prepare an Environmental Assessment for the Penn-Jersey Pipeline Project and Request for Comments on Environmental Issues

November 27, 1985.

Notice is hereby given that the staff of the Federal Energy Regulatory Commission (FERC) will prepare an environmental assessment on the facilities proposed in the above-referenced dockets. Texas Eastern Transmission Corporation (Texas Eastern) and Consolidated Gas Transmission Corporation (Consolidated) are seeking certificates of public convenience and necessity under section 7(c) of the Natural Gas Act to construct and operate a total of 143.44 miles of pipeline loop and appurtenant facilities (See table 1.) Since most of Texas Eastern's proposed facilities are located in a common geographic area within Pennsylvania and New Jersey; form continuous segments of pipeline looping; and would be constructed simultaneously in 1986, if authorized; the staff will study these facilities in one environmental document. This document will be known as the Penn-Jersey Pipeline Project-Environmental Assessment.

Texas Eastern would construct 17 pipeline loop segments adjacent to its existing transmission system. In general these loops would add either a third or fourth pipeline. Only Loop 16 would add a second pipeline. In seven locations the applicant would start a new fourth pipeline. Six of these new loops (Loops 6, 7, 8, 9, 11, and 13) are in areas that were previously looped by the applicant in or since 1981. Texas Eastern would use this looping to transport a total of up to 485,211 dekatherms per day of gas to customers in the eastern United States. The facilities necessary to implement this service would all have to be in service by the Fall of 1986.

Further, based on the best information available at this time, Washington Gas Light Company and Baltimore Gas and Electric Company would construct a "Y" shaped lateral pipeline system consisting of a total of 39 miles of 20 and/or 24-inch-diameter nonjurisdictional pipeline in Montgomery and Howard Counties, Maryland. This pipeline would extend from Consolidated's proposed Dickerson Meter Station near Dickerson, Maryland to an interconnection with their distribution systems near Rockville and Linden Church, Maryland. The environmental assessment wil address the nonjurisdictional facilities and alternatives to the proposed project.

The environmental assessment will be offered as evidentiary matter if hearings are held for these dockets. Anyone wishing to present evidence on environmental matters must file with the Commission a petition to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR § 385.214).

A copy of this notice has been distributed to Federal, state, and local environmental agencies, parties to the proceeding, and the public. In addition, a map showing the general location of the facilities identified in table 1 has been provided to those on the distribution list.

Comments from Federal, state and local agencies and the public are requested to help identify any significant issues or concerns related to the proposed action, to determine the scope of the issues that need to be analyzed, and to identify and eliminate from detailed study the issues which are not significant. Comments should be addressed to the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington,

DC 20426. Written comments should be submitted by December 31, 1985, and referenced to Docket CP85–803–000. Additional information about the proposals, including more detailed maps of the individual facility locations, is available from Mr. Kenneth Frye, Project Manager, Environmental Evaluation Branch, Office of Pipeline and Producer Regulation, telephone (202) 357–9039.

Kenneth F. Plumb,
Secretary.

Table 1.—Proposed Penn-Jersey Pipeline Project Facilities

Company and proposed facilities	Pipe diameter (inches)	Length (miles)	Location		Right-of-way width (feet)	
			State	Counties	Construction	Permanent
Texas Eastern Transmission Corp.[1]						
Pipeline Loop 1	26	4.0	OH	Muskingum	75	25
Pipeline Loop 2	36	1.75	OH	Noble	75	25
Pipeline Loop 3	36	1.75	WV	Marshall	75	25
Pipeline Loop 4	36	0.75	PA	Fayette	75	25
Pipeline Loop 5	36	15.00	PA	Westmoreland	75	25
Pipeline Loop 6	36	3.75	PA	do	75	25
Pipeline Loop 7	36	16.95	PA	Cambria and Blair	75	25
Pipeline Loop 8	36	21.43	PA	Huntingdon, Juniata, and Perry	75	25
Pipeline Loop 9	30/36	9.9	PA	Perry	75	25
Pipeline Loop 10	30	0.75	PA	Dauphin	75	25
Pipeline Loop 11	30/36	7.63	PA	Dauphin and Lebanon	75	25
Pipeline Loop 12	30	1.25	PA	Lebanon	75	25
Pipeline Loop 13	30/36	6.18	PA	Berks	75	25
Pipeline Loop 14	30	2.0	PA	do	75	25
Pipeline Loop 15	30	1.35	PA	do	75	25
Pipeline Loop 16	24	32.75	PA	Clinton and Centre	75	25
Pipeline Loop 17	42	14.25	NJ	Hunterdon and Somerset	75	25
Meter Station No. 9			PA	Greene		(2)
Meter Station No. 34			PA	Montgomery		(2)
Meter Station No. 128			NJ	Union		(2)
Meter Station No. 953			NJ	Middlesex		(2)
Consolidated Gas Transmission Corp.: Dickerson Meter Station [3].			MD	Montgomery		(4)

[1] Texas Eastern would also install two aerodynamic assembly changeouts as its existing Delmont Compressor Station near Greensburg, Pennsylvania.
[2] Existing aboveground facility site.
[3] About 39 miles of nonjurisdictional pipeline in the state of Maryland will be constructed by Washington Gas Light Company and Baltimore Gas and Electric Company. The specific location of these facilities is not known at this time.
[4] Two acre site.

[FR Doc. 85–28647 Filed 12–2–85; 8:45 am]
BILLING CODE 6717–01–M

[Docket Nos. CP86–82–000 et al.]

Natural Gas Certificate Filings; Texas Eastern Transmission Co. et al.

November 25, 1985.

Take notice that the following filings have been made with the Commission:

1. Texas Eastern Transmission Company

[Docket No. CP86–82–000]

Take notice that on October 29, 1985, Texas Eastern Transmission Corporation (Texas Eastern), P.O. Box 2521, Houston, Texas 77252, filed in Docket No. CP86–82–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Texas Eastern to provide a firm transportation service for The Brooklyn Union Gas Company, Elizabethtown Gas Company, New Jersey Natural Gas Company, Philadelphia Electric Company, Philadelphia Gas Works, and Public Service Electric and Gas Company (Keystone Shippers) and to construct and operate additional pipeline facilities required to render such service, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Texas Eastern proposes to provide a firm transportation service for the Keystone Shippers at the maximum daily transportation quantities (MAXDTQ) indicated below and such other volumes, on an interruptible basis, as are mutually agreed upon:

	MAXDTQ dt per day
The Brooklyn Union Gas Company	17,477
Elizabethtown Gas Company	5,394
New Jersey Natural Gas Company	10,789
Philadelphia Electric Company	13,486
Philadelphia Gas Works	5,394
Public Service Electric & Gas Company	25,018
Total	77,558

Texas Eastern states that, in order to increase their ability to meet high-priority winter market demands, the Keystone Shippers have individually entered into agreements with Equitable Gas Company (Equitable) pursuant to which Equitable would inject and store such quantities of gas as the Keystone Shippers deliver to Equitable and would upon request withdraw gas for the account of the respective Keystone Shippers. It is further stated that, in addition to the gas storage service to be purchased from Equitable, the Keystone Shippers have agreed to purchase gas in Equitable's storage facilities belonging to Kentucky West Virginia Gas Company (Kentucky West Virginia). Texas Eastern states that these gas purchase agreements are filed in Exhibit Z–2 of Equitable and Kentucky West Virginia's application in Docket No. CP85–876–000. Texas Eastern states that the Keystone Shippers have requested that Texas Eastern provide a firm transportation service between receipt and delivery points of Equitable and the respective Keystone Shippers in order to secure the essential transportation component to and from their market areas.

Texas Eastern proposes to construct and operate approximately 25.5 miles of 36-inch pipeline loop and 6.25 miles of 42-inch pipeline loop at ten locations on its existing system located in West Virginia, New Jersey, and Pennsylvania, and to expand the facilities at its meter station No. 009 located in Greene County, Pennsylvania in order to render the proposed transportation service. Texas Eastern further states that an aerodynamic assembly changeout would also be required at Texas Eastern's Lilly compressor station located in Cambria County, Pennsylvania. Texas Eastern estimates that these facilities would cost $43,838,000, and would be placed in service November 1, 1986, assuming timely receipt of Commission authorization. Texas Eastern proposes

to finance the facilities initially through revolving credit arrangements, short-term loans and funds on hand.

Texas Eastern proposes to perform the transportation service for the Keystone Shippers under proposed Rate Schedule FTS–II for a primary term commencing with the date the required facilities are placed in service and extending through March 31, 2002, in accordance with precedent agreements entered into between Texas Eastern and the Keystone Shippers. Texas Eastern states that the costs associated with all facilities which must be added to Texas Eastern's system to render the firm transportation service would be borne by the Keystone Shippers.

Texas Eastern proposes to charge, for all gas transported and delivered, a monthly charge for firm quantities, an excess gas charge for deliveries in excess of the firm quantities, and a commodity charge for deliveries of gas to Equitable for the account of Keystone Shippers which are purchased by the Keystone Shippers from suppliers other than Texas Eastern. Texas Eastern states that, based upon the estimated annual cost of service for the facilities proposed, it estimates a monthly charge of $12.6660 per dt equivalent of gas and an excess charge of $0.4164 per dt.

Comment date: December 16, 1985, in accordance with Standard Paragraph F at the end of this notice.

Northwest Pipeline Corporation

[Docket No. CP86–88–000]

Take notice that on October 30, 1985, Northwest Pipeline Corporation (Applicant), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP86–88–000 an application pursuant to section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale and delivery of natural gas to Northwest Natural Gas Company (NWN) at certain existing sales meter stations and for permission and approval to abandon the sale and delivery of natural gas presently provided to The Washington Water Power Company (WWP) at these same three meter stations; all as more fully described in the application on file with the Commission and open to public inspection.

Applicant states that NWN, by letter dated September 11, 1985, informed Applicant that NWN and WWP had entered into a letter agreement (agreement), dated April 29, 1985, for the sale of WWP's Stevenson and Goldendale, Washington, distribution properties to NWN.

Applicant avers that NWN stated that the primary reason for the transfer of distribution properties between NWN and WWP is for operating convenience, since the Goldendale and Stevenson communities are within or adjacent to NWN's existing service area in the mid-Columbia River area and quite remote from WWP's existing service territories.

Applicant states since the natural gas service to WWP which Northwest proposes to abandon would be replaced by the service Applicant proposes to provide for NWN, natural gas service to the communities of Goldendale and Stevenson would be continued. It is explained that since the additional volumes of natural gas proposed to be sold by Northwest to NWN would be the same volumes which Northwest has theretofore been authorized to sell and deliver to WWP, no increase in Applicant's total system daily contract demand would result from the grant of the requested authorizations.

Applicant states that with the transfer of contract demand, NWN's total Rate Schedule ODL–1 contract demand is increased by 10,820 therms per day, from 2,860,440 to 2,871,260, and WWP's total Rate Schedule ODL–1 contract demand is decreased by 10,820 therms per day, from, 1,332,695 to 1,321,875.

Applicant explains further that the proposed changes in service would be implemented without any change in facilities and without any interruption of service to the communities involved.

For the above reasons, Applicant avers that the authorizations requested herein are clearly required by the present and future public convenience and necessity and should be granted as requested. Applicant maintains that upon approval by the Washington Utilities and Transportation Commission (WUTC) of the transfer of these distribution properties from WWP to NWN, NWN would have the exclusive right and obligation to provide natural gas distribution service to the Goldendale and Stevenson areas.

Applicant understands that WWP and NWN have filed with the WUTC for approval of the transfer of the Goldendale and Stevenson distribution properties and service areas from WWP to NWN. Approval of the proposed transfer by the WUTC is expected to be in place by approximately October 31, 1985.

Comment date: December 13, 1986, in accordance with Standard Paragraph F at the end of this notice.

3. Northern Border Pipeline Company

[Docket No. CP86–144–000]

Take notice that on November 1, 1985, Northern Border Pipeline Company (Applicant), 224 South 108th Avenue, P.O. Box 3330, Omaha, Nebraska 68103, filed in Docket No. CP86–144–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the addition of two delivery points and transportation of 125,000 Mcf of natural gas per day to Welcome, Minnesota, and 25,000 Mcf of natural gas per day to Aberdeen, South Dakota, to Northern Natural Gas Company, a Division of HNG InterNorth, Inc. (Northern), for the account of United Gas Pipe Line Company (United), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that pursuant to its Order No. 60 blanket authorization, Applicant had delivered volumes to Northern at Welcome and Aberdeen for the account of United, and pursuant to the agreement between Applicant and United, such deliveries terminated on October 26, 1985, as the agreement had expired. It is explained that Northern would exchange thermally equivalent volumes with Applicant at mutually agreeable points in the Gulf Coast area pursuant to an agreement between Northern and United dated August 10, 1979, as amended.

It is alleged that Northern has advised the Applicant that in order to maintain operational flexibility on its system, Northern requires the receipt of up to 125,000 Mcf of natural gas per day at Welcome and up to 25,000 Mcf of natural gas per day at Aberdeen. Although Northern currently has the capability of receiving such volumes at Welcome and Aberdeen, it is during periods when volumes from Northern's Canadian suppliers and volumes transported by the Applicant from Buford, North Dakota, are less than the volumes Northern desires to receive at Welcome and Aberdeen, that operational efficiencies cannot be achieved. It is during these low flow periods that Northern will require the flexibility to take United volumes at Welcome and Aberdeen.

It is further stated that said volumes would not affect Applicant's allocated costs as set forth in Rate Schedule T–1 of Applicant's FERC Gas Tariff, Original Volume No. 1.

Comment date: December 16, 1985, in accordance with Standard Paragraph F at the end of this notice.

4. Northern Natural Gas Company Division of InterNorth Inc.

[Docket No. CP77–192–001]

Take notice that on October 31, 1985, Northern Natural Gas Company, Division of InterNorth, Inc. (Applicant),

2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP77–192–001 a petition to amend the order issued June 30, 1977, in Docket No. CP77–192 pursuant to section 7(c) of the Natural Gas Act so as to authorize two additional points of delivery to its authorized exchange arrangement with Cabot Petroleum Corporation (Cabot), all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

It is stated that by order issued June 30, 1977, Applicant and Cabot were authorized to exchange gas in accordance with an April 1, 1967, gas exchange agreement. It is stated that on June 8, 1983, Applicant and Cabot executed an amendment to the April 1, 1967 gas exchange agreement providing for the addition of two additional points of delivery of exchange gas.

It is further stated that Applicant proposes, in accordance with the amendment, to add a point located in Section 163, Block 3, I&GN RR Survey, Gray County, Texas, as a point of receipt of exchange gas from Cabot. Applicant proposes to use a second point located in Section 184, Block 3, I&GN RR Co. Survey, Gray County, Texas for the delivery of exchange gas to Cabot. It is asserted that no new facilities are required to implement the proposed service.

Comment date: December 17, 1985, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

5. Natural Gas Pipeline Company of America

[Docket No. CP86–131–000]

Take notice that on November 1, 1985, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois, 60148, filed in Docket No. CP86–131–000 an application pursuant to section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation on an interruptible basis up to 100 billion Btu of gas per day for TransAmerican Pipeline Corporation and TransAmerican Transmission Corporation (TransAmerican) and for permission and approval to abandon such service, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Natural requests authority to provide an interruptible transportation service for TransAmerican for a term commencing on the date of initial deliveries of gas and ending two years thereafter or such earlier date at which the parties mutually agree to terminate the limited-term gas transportation agreement, dated August 5, 1985.

It is explained that natural gas for TransAmerican's account would be delivered to Natural at the existing interconnection between the facilities of Natural and TransAmerican located in Jim Hogg County, Texas. Natural would redeliver thermally equivalent volumes, less gas used for fuel, at the existing and proposed interconnection between TransAmerican and Natural in Nueces County, Texas.

Natural proposes to charge TransAmerican 3.2 cents and 2.8 cents per million Btu for volumes received in Jim Hogg County, Texas. In addition, Natural would charge TransAmerican the currently effective GRI surcharge.

It is stated that new facilities required for this service would be constructed pursuant to Natural's blanket certificate issued in Docket No. CP82–402–000. Natural also requests authorization to add additional receipt points in the future necessary to support this service.

Comment date: December 16, 1985, in accordance with Standard Paragraph F at the end of this notice.

6. Natural Gas Pipeline Company of America

[Docket No. CP74–162–018]

Take notice that on November 1, 1985, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP74–162–018 a petition to amend the order issued April 2, 1975, in Docket No. CP74–162, as amended, pursuant to section 7(c) of the Natural Gas Act so as to authorize the exchange of natural gas between Natural and El Paso Natural Gas Company (El Paso) at an additional exchange point in San Juan County, Utah, and to include San Juan County, Utah, and San Juan County, New Mexico, in the specified area of interest, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Pursuant to an amendment dated September 30, 1985, to the gas exchange agreement, Natural and El Paso propose to add an additional exchange point in San Juan County, Utah. Natural proposes to deliver exchange gas to El Paso for Natural's account at an existing point of measurement on El Paso's facilities located downstream of El Paso's Aneth plant in San Juan County, Utah (Aneth exchange point). It is indicated that the gas reserves Natural would be delivering to El Paso are being purchased by Natural under an existing gas purchase contract, dated October 14, 1984, with Wintershall Oil and Gas Corporation in Montezuma County, Colorado, which is in close proximity to El Paso's pipeline system. Natural states that no additional facilities are required at the Aneth exchange point because exchange gas delivered would be commingled with gas purchased by El Paso and delivered into El Paso's transmission system through Cameron measurement facilities owned and operated by El Paso. Natural states that it and El Paso commenced deliveries at the Aneth exchange point pursuant to Subpart G of Part 284 of the Commission's Regulations and Natural's and El Paso's blanket authorizations to transport for interstate pipelines issued in Docket Nos. CP80–128 and CP80–127, respectively (reported by in Natural Docket No. ST85–763, reported by El Paso in Docket No. ST85–716). Natural and El Paso would continue to exchange up to the maximum certificated volume of 65,000 Mcf of gas per day, it is asserted.

In addition, Natural and El Paso propose to include San Juan County, Utah, and San Juan County, New Mexico, in the existing area of interest. It is stated that this would enable Natural and El Paso to add points in these counties utilizing and balancing points without having to file amendments.

Comment date: December 16, 1985, in according with the first subparagraph of Standard Paragraph F at the end of this notice.

7. Natural Gas Pipeline Company of America

[Docket No. CP86–106–000]

Take notice that on October 31, 1985, Natural Gas Pipeline Company of America (Applicant), 701 East 22nd Street, Lombard, Illinois 60148, filed in docket No. CP86–106–000 an application pursuant to section 7 of the Natural Gas Act for authorization to transport natural gas on an interruptible basis for Firestone Tire and Rubber Company (Firestone), an industrial end-user, and for permission and approval to abandon such service upon expiration of a two-year limited-term period, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Applicant proposes to transport up to a maximum of 4 billion Btu's of natural gas per day for Firestone from the date certificate authority acceptable to Applicant is received through June 27, 1987. Applicant would provide such service pursuant to the limited-term gas transportation agreement between Applicant and Firestone dated June 26,

1985, it is stated. Applicant also requests permission and approval to abandon the transportation service contemplated herein upon the expiration of the said term of agreement.

Applicant states that the proposed end-use of the gas purchased by Firestone is intended to satisfy process, space heating and air conditioning needs in Firestone's Decatur, Illinois, plant.

Applicant further states that it would receive gas for the account of Firestone at two existing points of interconnection between the facilities of Applicant and Reliance Pipeline Company (Reliance), a gathering company in Caddo County, Oklahoma. Applicant proposes to redeliver thermally equivalent volumes, less 9.4 percent, initially, for gas lost and unaccounted for, gas used as fuel, and gas used in day-to-day pipeline operations, to the outlet flange of the meter station at the existing interconnection of Applicant's pipeline facilities and Illinois Power Company, near Hammond in Piatt County, Illinois.

Applicant further proposes to charge Firestone a transportation rate for each million Btu of gas received. This transportation rate would be the greater of Applicant's non-gas cost component of its Rate Schedule DMQ–1 commodity charge or a mileage-based rate computed utilizing Applicant's currently effective cost per 100 miles for onshore transportation service, it is stated. For illustrative purposes only, the current transportation rates are said to be:

Point of receipt	Point of delivery	Mileage	Transportation rate (cents)
Caddo County, OK.	Piatt County, IL	596	22.5

In addition, Applicant also proposes to charge Firestone the currently effective Gas Research Institute (GRI) surcharge per million Btu, as set forth on Sheet No. 5A of Applicant's FERC Gas Tariff, Volume No. 1. For illustrative purposes only, the currently effectively GRI surcharge is said to be 1.21 cents per million Btu.

Applicant also requests flexible authority to add or delete receipt/delivery points associated with sources of gas acquired by the end-user. The flexible authority requested applies only to points related to sources of gas supply, not to delivery points in the market area. Applicant will file a report providing certain information with regard to the addition or deletion of sources of gas as further detailed in the application and any additional sources of gas would only be obtained to constitute the transportation quantities herein and not to increase those quantities.

Comment date: December 16, 1985, in accordance with Standard Paragraph F at the end of this notice.

8. Natural Gas Pipeline Company of America

[Docket No. CP86–137–000]

Take notice that on November 1, 1985, Natural Gas Pipeline Company of America (Applicant), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP86–137–000 an application pursuant to section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportion of up to 28 billion Btu of natural gas per day on an interruptible basis for Inland Steel Company (Inland) and for permission and approval to abandon such service, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Applicant requests authority to provide an interruptible transportation service for Inland from the date certificate authority acceptable to Applicant is received through February 17, 1987. Applicant would provide such service pursuant to the terms and conditions contained in the gas transportation agreement, dated February 18, 1985 (agreement), between Applicant and Inland.

Applicant proposes to receive natural gas for the account of Inland at (1) the existing point of interconnection between the facilities of Applicant and Oklahoma Natural Gas Company (ONG) in Custer County, Oklahoma; (2) the existing point of interconnection betwen the facilities of Applicant and ONG in Woodward County, Oklahoma; (3) the existing point of interconnection between the facilities of Applicant and Kaiser Francis Oil Company, in Woodward County, Oklahoma; (4) the existing point of interconnection between the facilities of Applicant and Mustang Fuel Corporation in Washita County, Oklahoma; (5) the existing point of interconnection between the facilities of Applicant and MidVen Pipeline Company in the Ignacio Sanchez Survey, A–509 in Nacogdoches County, Texas; (6) the existing point of interconnection between the facilities of Applicant and TransAmerican Natural Gas Corporation in the Andres F. De La Fuente Grant Survey, A–111 in Nueces County, Texas; and (7) the existing point of interconnection between the facilities of Applicant and M. V. Pipeline Company in Caddo County, Oklahoma. Redelivery for the account of Inland would occur at the existing point of interconnection between the facilities of Applicant and Northern Indiana Public Service Company on the border of Cook County, Illinois, and Lake County, Indiana for use in Inland's Indiana Harbor Works. Applicant also requests authorization to add additional receipt points in the future that may be necessary to support this service.

Applicant proposes to charge Inland transportation rates as follows:

Receipt point	Cents per million Btu
Nueces Co., TX	37.7
Nacogdoches Co., TX	31.3
Washita Co., OK	28.2
Caddo Co., OK	27.9
Woodward Co., OK	27.2
Custer Co., OK	72.2

In addition, Applicant states that it would charge Inland for fuel used and lost and unaccounted for gas under the agreement and that this charge would be based on the percentage of fuel utilized in performing the proposed transportation and the weighted average cost of gas contained in the Applicant's currently effective purchased gas adjustment. Applicant also proposes to charge Inland the currently effective Gas Research Institute surcharge as set forth on Sheet No. 5A of Applicant's FERC Gas Tariff, Volume No. 1. Such surcharge is currently 1.21¢ per million Btu, it is stated.

Applicant states that it provided similar service commencing on February 18, 1985, pursuant to §§ 157.205 and 157.209(e)(1) of the Commission's Regulations. Such service terminates on October 31, 1985, because of the expiration of Order 234–B on that day, it is stated.

Comment date: December 16, 1985, in accordance with Standard Paragraph F at the end of this notice.

9. Midwestern Gas Transmission Company

[Docket No. CP86–125–000]

Take notice that on November 1, 1985, Midwestern Gas Transmission Company (Applicant), P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CP86–125–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing an interruptible natural gas transportation service for Bethlehem Steel Corportion (Bethlehem Steel) pursuant to an interruptible transportation agreement between Applicant and Bethlehem Steel, dated May 23, 1985, as amended October 15,

1985 (Agreement), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Pursuant to the provisions of the Agreement, Applicant states that Bethlehem Steel has requested that Applicant transport, on an interruptible basis, up to 25,000 Mcf of gas per day from a point on the international border between the United States and Canada at Emerson, Manitoba, where the facilities of TransCanada PipeLines, Ltd., and Applicant interconnect, to points where Applicant's facilities interconnect with those of InterNorth, Incorporated (Northern Natural) near North Branch, Minnesota, and Cambridge, Minnesota, and those of ANR Pipeline (ANR) Company near Marshfield, Wisconsin. It is further stated that Northern Indiana Public Service Company will transport the gas to Bethlehem Steel for use at its Burns Harbor, Indiana, facility.

Applicant alleges that the term of the proposed transportation service is for an initial term of two years, and year-to-year thereafter.

It is further stated that Bethlehem Steel would pay Midwestern as follows:

(1) For volumes received TransCanada for Bethlehem Steel's account and delivered to Northern Natural at North Branch, the charge, inclusive of compression charge of 0.8¢, shall equal the product of 11.75¢ multiplied by the total volume in Mcf of gas received for the account of Bethlehem Steel during the month, less two and 2.2% of the volumes retained by Applicant for fuel and uses.

(2) For volumes received from TransCanada for Bethlehem Steel's account and delivered to Northern natural at Cambridge, the charge, inclusive of the compression charge of 0.8¢ shall equal the product of 11.22¢ multiplied by the total volume in Mcf of gas received for the account of Bethlehem Steel during the month, less 2.1% of the volumes retained by Applicant for fuel and uses.

(3) For volumes received from TransCanada for Bethlehem Steel's account and delivered to ANR at Marshfield, the charge, inclusive of the compression charge of 0.8¢, shall equal the product of 16.58¢ multiplied by the total volume in Mcf of gas received for the account of Bethlehem Steel during the month, less 3.0% of the volumes retained by Applicant for fuel and uses.

Comment date: December 16, 1985, in accordance with Standard Paragraph F at the end of this notice.

10. Consolidated Gas Transmission Corporation

[Docket No. CP86-146-000]

Take notice that on November 1, 1985, Consolidated Gas Transmission Corporation (Applicant), 445 West Main Street, Clarksburg, West Virginia 26301, filed in Docket No. CP86-146-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas in interstate commerce on behalf of South Jersey Gas Company (South Jersey), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant requests authorization to render firm transportation of up to 5,500 dt equivalent of natural gas per day for South Jersey. It is indicated that the transportation service would be provided by Applicant pursuant to a transportation agreement dated October 21, 1985. Applicant states that the transportation service would commence on the date Applicant commences deliveries and continue through March 31, 2002, and year to year thereafter, unless terminated by either Applicant or South Jersey upon twelve-month's written notice. It is indicated that deliveries would commence no later than November 1, 1986.

Applicant states that it would transport gas in connection with a gas storage arrangement between South Jersey and Equitable Gas Company (Equitable), and a firm transportation arrangement between South Jersey and Transcontinental Gas Pipe Line Corporation (Transco). It is indicated that Applicant would transport gas acquired by South Jersey from an existing interconnection between Applicant and Transco known as the Leidy connection, in Potter County, Pennsylvania, or on any other receipt point(s) agreed upon, and deliver such gas to Equitable at an existing interconnection between Applicant and Equitable near Waynesburg, Pennsylvania, known as the Pratt Farm connection, for injection into storage. It is further indicated that, upon withdrawal from storage, Applicant would receive the gas from Equitable at the Pratt Farm connection and would deliver the gas for South Jersey's account to Transco at the Leidy connection, in Potter County, Pennsylvania, for further delivery to South Jersey.

It is explained that the gas to be transported by Applicant, is gas which South Jersey has or may acquire in proximity to Applicant's existing pipelines or gas South Jersey purchases from Equitable. It is further explained that, during the first year, South Jersey would purchase a portion of gas, which is being stored by Equitable, from Kentucky-West Virginia Gas Company, and purchase additional supplies from Transco and others.

Applicant states that South Jersey would pay Applicant for such firm transportation services an amount based on a two-part rate, consisting of a monthly demand charge equal to a demand component multiplied by the contract transportation demand, and a commodity component for each dt of gas transported. It is indicated that these rates are based on Applicant's jurisdictional system transmission and storage costs applicable to sales and transportation services. Applicant further states that, as of the date of commencement of the transportation service, it anticipates that the demand component would be $0.9220 per dt and the commodity component would be $0.3518 per dt.

Applicant states that Equitable has filed an application in Docket No. CP85-876-000 seeking Commission authorization, *inter alia*, to render storage service for South Jersey, and Transco would file an application seeking Commission authorization to provide firm transportation service for South Jersey.

Comment date: December 16, 1985, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs:

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice

and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-28648 Filed 12-2-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP86-141-000 et al.]

Natural Gas Certificate Filings; Transcontinental Gas Pipe Line Corp. et al.

November 26, 1985.

Take notice that the following filings have been made with the Commission:

1. Transcontinental Gas Pipe Line Corporation

[Docket No. CP86-141-000]

Take notice that on November 1, 1985, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP86-141-000 an application pursuant to section 7(c) of the Natural Gas Act for a certifcate of public convenience and necessity authorizing a transportation service on behalf of Damson Oil Corporation (Damson), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that Damson, a small producer, has contracted to sell certain quantities of natural gas available in the Leleux field, Vermilion Parish, Louisiana (Leleux field), to Florida Gas Transmission Company (FGT). It is explained that FGT constructed 0.20 and 1.03 miles of 4-inch pipeline from Damson's No. 1 Adams Well in the Leleux field to Transco's system pursuant to FGT's blanket certificate issued in Docket No. CP82-553-000 on November 10, 1982. It is further explained that Transco constructed a tap and meter at that point of interconnection pursuant to its blanket certificate issued in Docket No. CP82-426-000 on September 2, 1982. Therefore, it is stated that the quantities of gas purchased by FGT in the Leleux field would be received by Transco from FGT at the existing point of interconnection between the facilities of Tranco and FGT in that field. It is further stated that Transco would transport on behalf of Damson, on an interruptible basis, up to the dekatherm equivalent of 20,000 Mcf of natural gas per day and redeliver such quantities at existing points of interconnection between the facilities of Transco and FGT in Vermilion and St. Helena Parishes, Louisiana.

The term of the transporation agreement between Transco and Damson is stated to be for a primary term of 15 years from the date of initial deliveries, and year to year thereafter, subject to termination at the end of the primary term or any year thereafter. It is stated that the proposed transportation service would enable Damson to secure a market for its natural gas production from the Leleux field and would assist FGT in securing additional gas supplies for its system.

Transco asserts that it would charge Damson an initial rate of 6.81 cents per dt equivalent transported to the Vermilion Parish delivery point. Transco states that it would charge Damson an inital rate of 18.01 cents per dt eqivalent transported to the St. Helena Parish delivery point. Transco further asserts that it would retain, initially, 1.2 percent of all quanitities transported to the St. Helena Parish delivery point to compensate for compressor fuel and line loss make-up but would not retain, initially, any of the quantities transported to the Vermilion Parish delivery point.

Comment date: December 17, 1986, in accordance with Standard Paragraph F at the end of this notice.

2. Ringwood Gathering Company

[Docket No. CP86-116-000]

Take notice that on October 31, 1985, Ringwood Gathering Company (Applicant), 100 West Fifth Street, Tulsa, Oklahoma 74103, filed in Docket No. CP86-116-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale of natural gas off-system to unspecified customers on a non-discriminatory basis, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that Northwest Central Pipeline Company (Northwest Central). Applicant's only significant customer, would reduce its takes to 9,000 Mcf of natural gas per day and that as a result Applicant would then have a significant volume of gas available for sale. Applicant states that it processes the gas sold to Northwest Central in its Ringwood processing plant and that in an effort to keep the plant at full capacity and to increase its pipeline system through-put, Applicant is seeking authorization to sell its excess gas to unspecified markets.

Applicant states that the price for this gas would be the minimum of the volumetric price level now specified in Applicant's tariff or the commodity rate proposed in Docket No. RP85-210-000, once it is approved. Applicant also states that Northwest Central's costs would not be affected by approval of this application and that Applicant would file reports with the Commission upon commencement or termination of any sale.

Comment date: December 17, 1985, in accordance with Standard Paragraph F at the end of this notice.

3. Southern Natural Gas Company

[Docket No. CP86-191-000]

Take notice that on November 5, 1985, Southern Natural Gas Company (Southern), P.O Box 2563, Birmingham, Alabama 35202, filed in Docket No. CP86-191-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon approximately 1.8 miles of a 6-inch pipeline and related facilities located in offshore Louisiana, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Southern requests an order authorizing the abandonment of approximately 1.8 miles of a 6-inch pipeline and related facilities extending from the production platform in Main Pass 115, offshore Lousisana, to Southern's under water tap in Main Pass Block 117. Southern states that its producer, Diamond Shamrock Exploration Company (Diamond Shamrock), advised Southern that Diamond Shamrock intends to remove its Main Pass Block 115 Platform and production facilities. Southern states that for safety reasons, it must be authorized to abandon its facilities concurrently with the producer's platform abandonment. Southern proposes to abandon the underwater pipeline by disconnecting it from the subsea tie in at Block 117. Southern further proposes to abandon the 6-inch user and related facilities by removal, at an estimated cost of $30,000, which would be partially offset by a $110,706 salvage value. Southern further states that the proposed abandonment would not result in any termination of service by it.

Comment date: December 17, 1985, in accordance with Standard Paragraph F at the end of this notice.

4. Tennessee Gas Pipeline Company

[Docket No. CP86-128-000]

Take notice that on November 1, 1985, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Applicant), P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CP86-128-000 an application pursuant to section 7(b) of the Natural Gas Act for permission to abandon an M-1 compressor facility located at Eugene Island Block 257, Platform C, offshore Louisiana, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Applicant states that its M-1 compressor facility, certificated in Docket No. CP77-293, is presently in need of extensive repairs to maintain a safe operable working condition. Applicant states that an estimate on the cost to repair the unit, approximately $85,000 to $113,000 depending on the condition of the crankshaft, is in excess of the depreciated book value, $82,726 as of September 1, 1985. Applicant states that Canadian Oxy Offshore Production Company (Canadian) and Conoco, Inc. (Conoco), owners of the Eugene Island Platform 257C, have proposed, pursuant to letter agreement dated July 9, 1985, to pruchase the unit for $1,000. Applicant further states that the proposed abandonment and sale would save Applicant the cost of removing the unit and Canadian and Conoco would restore, operate and maintain the unit at their sole cost, expense and liability.

Comment date: December 17, 1985, in accordance with Standard Paragraph F at the end of this notice.

5. Northwest Pipeline Corporation

[Docket No. CP86-177-000]

Take notice that on November 1, 1985, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP86-177-000 an application pursuant to section 7(c) of the Natural Gas Act for a limited-term certificate of public convenience and necessity authorizing the transportation of natural gas in interstate commerce for the account of CPEX Pacific, Inc. (CPEX), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northwest proposes to provide an interruptible transportation service of up to 10 billion Btu of natural gas per day for the account of CPEX, for a term of five years, pursuant to a gas transportation agreement (transportation agreement) dated October 30, 1985. Northwest also requests blanket authority to add and delete receipt points under the transportation agreement.

It is said that CPEX has acquired, or intends to acquire, supplies of natural gas for its own use which it would deliver to Northwest for transportation at certain receipt points. It is explained that these receipt points include Northwest's existing interconnections with Colorado Interstate Gas Company in Sweetwater County, Wyoming and Uintah County, Utah, and with Utah Gas Service Company near Jensen, Utah. Further, it is stated that an additional receipt point in located at the junction between Northwest's gathering and transmission facilities at the Opal gasoline plant in Lincoln County, Wyoming.

It is further stated that under the transportation agreement, Northwest proposes to accept up to 10 billion Btu's per day for CPEX's account at the agreed upon receipt points and to transport and redeliver thermally equivalent volumes for CPEX's account to Northwest Natural Gas Company (Northwest Natural) at Northwest's existing Deer Island meter station in Columbia County, Oregon. Northwest Natural would utilize its existing distribution facilities to transport CPEX's gas from the Deer Island meter station to CPEX's fertilizer plant near St. Helens, Oregon. CPEX would use the subject gas as process fuel and feedstock in the manufacture of anhydrous ammonia at its St. Helens fertilizer plant.

It is said that for all volumes of gas transported by Northwest under the transportation agreement, Northwest proposes to charge CPEX at its incremental on-system transportation rate, including fuel reimbursement and GRI adjustment, as set forth in its FERC Gas Tariff. These currently effective rates as shown on Sheet Nos. 2.2 and 2.3 of Volume No. 2 of Northwest's tariff are 20.0 cents per million Btu for transportation, 1.18 cents per million Btu for the GRI adjustment, and a monthly fuel reimbursement charge equal to 1.1 percent of the transportation receipt volume time Northwest's average pruchased gas cost for the month.

Comment date: December 17, 1986 in accordance with Standard Paragraph F at the end of this notice.

6. Northwest Alaskan Pipeline Company

[Docket No. CP86-165-000]

Take notice that on November 1, 1985, Northwest Alaskan Pipeline Company (Applicant), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP86-165-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the off-system [1] sale and exchange of natural gas in interstate commerce, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it requests blanket authorization to make discretionary sales of certain volumes of Canadian natural gas to various purchasers for a period of two years from the date of the first sale.

It is explained that the gas Applicant proposes to sell on a short-term basis to end-users, distribution companies and pipelines would be Canadian gas which Applicant purchases under long-term contracts from Pan-Alberta Gas, Ltd. (Pan-Alberta), but which exceeds the requirements for specified periods of time of Applicant's long-term contract purchasers. Applicant states that it would sell the gas to short-term purchasers at two import points or at the terminus of the Northern Border Pipeline Company (Northern Border) system. Applicant says that the two import points are a point on the international boundary between the United States and Canada near Kingsgate, British Columbia, and a point on the same international boundary near Monchy, Saskatchewan. Applicant states that sale of gas at the terminus of Northern Border would be accomplished by means of a cost free exchange between Applicant and one of its long-term contract purchasers wherein said purchaser would deliver gas from its system supply to the short-term purchaser at the terminus of Northern Border and Applicant would redeliver thermally equivalent volumes to the long-term contract purchaser at the import point near Monchy.

Applicant explains that it would sell this gas at a price which is the sum of the commodity charge paid by Applicant to Pan-Alberta, any transportation costs incurred by Applicant and other costs of making the sale, including a negotiated fee.

Applicant asserts that the proposed sales would make available competitively priced Canadian gas to consumers, would increase the volume of gas being transported through the Alaskan Natural Gas Transportation System (ANGTS) resulting in a present and future benefit to ANGTS users.

[1] Any sales to purchasers other than Applicant's four long-term contract purchasers.

would assist in the protection of the revenue stream underpinning the financing of the Canadian segment of the ANGTS and would enhance the assurance of a longterm secure source of gas supply.

Comment date: December 17, 1985, in accordance with Standard Paragraph F at the end of this notice.

7. Natural Gas Pipeline Company of America

[Docket No. CP86-186-000]

Take notice that on November 1, 1985, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, P.O. Box 1208, Lombard, Illinois 60148, filed in Docket N. CP86-186-000 an application, as supplemented November 9, 1985, pursuant to sections 7(b) and 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation, on an interruptible basis, of up to 30 billion Btu equivalent of gas for Mississippi River Transmission Corporation (MRT) and for permission and approval to abandon such service, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Natural proposes to transport on a best-efforts basis up to 30 billion Btu equivalent of natural gas per day for MRT for a term commencing on the date of initial deliveries and ending two years thereafter or on an earlier date mutually agreed upon by Natural and MRT to terminate the limited term transportation agreement, dated July 22, 1985. It is explained that the subject gas would be delivered to Natural by Arco Oil and Gas Company at an undersea tap, to be constructed, on Natural's 16-inch pipeline in High Island Block 71 (HI 71), offshore Texas and redelivered to MRT at an existing interconnection near Woodlawn, Harrison County, Texas.

Natural proposes to charge MRT the greater amount of a unit rate for each million Btu equivalent of gas transported based upon Natural's non-gas component of its DMQ-1 commodity charge or a rate based on Natural's onshore cost per 100 miles as shown in Natural's FERC Gas Tariff page 5A, Volume 1 plus a computed incremental offshore charge of 4.8 cents per million Btu equivalent of gas.

Natural states that it will construct the interconnection in HI 71 pursuant to its blanket certificate issued in Docket No. CP82-402-000.

Natural also requests flexible authority for the addition of gas receipt points to support the proposed transportation service. Natural states it would file, pursuant to Part 154 of the Commission's Regulations, by March 31 of each year, tariff revisions reflecting any additional receipt points.

Comment date: December 17, 1986, in accordance with Standard Paragraph F at the end of this notice.

8. Neches Gas Distribution Company

[Docket No. CP86-164-000]

Take notice that on November 1, 1985, Neches Gas Distribution Company (Applicant), P.O. Box 52332, Houston, Texas 77052, filed in Docket No. CP85-164-000 an application pursuant to section 7 of the Natural Gas Act and § 284.224 of the Commission's Regulations for a blanket certificate of public convenience and necessity authorizing the sale, transportation or assignment of natural gas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant agrees to comply with the conditions as set forth in § 284.224(e) of the Commission's Regulations.

Comment date: December 17, 1985, in accordance with Standard Paragraph F at the end of this notice.

9. Natural Gas Pipeline Company of America

[Docket No. CP86-132-000]

Take notice that on November 1, 1985, Natural Gas Pipeline Company of America (Applicant), 701 East 22nd Street, Lombard, Illinois, 60148, filed in Docket No. CP86-132-000 an application pursuant to section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas on an interruptible basis for General Tire, Inc. (GTI) and for permission and approval to abandon such service on July 2, 1987, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Applicant proposes to provide an interruptible transportation service of up to a maximum of 2 billion Btu of natural gas per day for GTI from the date certificate authority acceptable to Applicant is received through July 2, 1987. Applicant states that it would provide such service pursuant to the terms and conditions contained in the limited-term gas transportation agreement between Applicant and GTI, dated June 27, 1985.

Applicant proposes to transport natural gas on behalf of GTI, an industrial end-user, for use primarily for tire manufacturing purposes in GTI's plant in Mt. Vernon, Illinois.

Applicant explains it would receive volumes of gas for the account of GTI from two receipt points in Montgomery County, Texas, and Washita County, Oklahoma, and would redeliver equivalent volumes to Illinois Power Company in Clinton County, Illinois, and that no new facilities would be required for this service. Applicant requests authorization to add additional receipt points in the future that may be necessary to support this service.

Applicant proposes to charge GTI 26.0 cents per million Btu of gas for volumes received in Montgomery County, Texas, and 22.51 cents per million Btu for volumes received in Washita County, Oklahoma. In addition, Applicant proposes to charge GTI the currently effective GRI surcharge.

Applicant states that it provided similar transportation service commencing on July 3, 1985, pursuant to §§ 157.205 and 157.209(e)(1) of the Commission's Regulations and that such service terminated on October 31, 1985, because of the expiration of Commission Order No. 234-B on that date.

Comment date: December 17, 1986, in accordance with Standard Paragraph F at the end of this notice.

10. Colorado Interstate Gas Company

[Docket No. CP86-162-000]

Take notice that on November 1, 1985, Colorado Interstate Gas Company (CIG), Post Office Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP86-162-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas for Associated Natural Gas, Inc. (ANGI), the construction and operation of facilities, and the addition and deletion of delivery points, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

CIG seeks authorization to transport, on an interruptible basis, up to 15,000 Mcf of natural gas per day. CIG states that it would receive this natural gas for ANGI's account at its Waite Lake and Spindle meter stations in Weld County, Colorado, from Pantera Energy Corporation and Amoco Production Company, respectively. CIG states that it would redeliver thermally equivalent volumes, less fuel use and lost and unaccounted-for volumes, to ANGI at two proposed interconnections in Sherman and Moore Counties, Texas.

CIG proposes to construct metering facilities at the proposed interconnections which would be known as the Spurlock and Palo Duro meter

stations, at a total estimated cost of $120,000. It is stated that ANGI has agreed to reimburse CIG for the cost of such facilities. CIG further requests authority to add and delete supply delivery points and proposes to file annual tariff revisions to advise the Commission of such revisions.

CIG proposes to charge ANGI an initial rate of 32.62 cents per Mcf for all volumes transported and redelivered. It proposes to charge an additional 1.25 cents per Mcf for the Gas Research Institute funding fee. CIG states that the proposed transportation rate is equivalent to its current Rate Schedule EUS-2 rate, which is in effect subject to refund, pending final Commission action in Docket No. RP85-122-000.

CIG states that its transportation agreement with ANGI provides for an initial term of three years, but would continue thereafter, year to year, until terminated by either party. It is also stated that ANGI intends to sell the transported volumes to North Plains AgriGas, Inc., a Texas nonprofit corporation, for essential agricultural uses (primarily as fuel for irrigation pumps in the Texas Panhandle region).

Comment date: December 17, 1985, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs:

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-28649 Filed 12-2-85; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-140071]; FRL-2933-2

Access to Confidential Business Information by Hampshire Research Associates

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized the Hampshire Research Associates (HRA) for access to information which has been submitted to EPA under all reporting provisions of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M St., SW., Washington, DC 20460. Toll-Free: (800-424-9065). In Washington, DC: (554-1404). Outside the USA: (Operator-202-554-1404).

SUPPLEMENTARY INFORMATION: The Office of Toxic Substances (OTS) has initiated a major outreach program for other EPA offices and other Federal agencies, State governments, public interest and labor groups, and industry. The goals of this program are (1) to enhance public awareness of OTS investigative and regulatory policies; (2) to improve information sharing between OTS and outside organizations and individuals; and (3) to foster increased participation in the development and implementation of TSCA policies.

Under a subcontract to a contract awarded to Life Systems, Inc. (Contract No. 68-02-4228), previously announced in the **Federal Register** of September 3, 1985 (50 FR 35597), HRA, 4158 South 36th St., Alexandria, Va., will assist in the OTS outreach program by evaluating the availability, accessibility, and utility of OTS information resources and systems to outside organizations. Some of the information systems to be evaluated contain TSCA CBI.

HRA personnel will not conduct substantive review of any TSCA CBI under this subcontract; however, execution of its provisions will require that these personnel be given access to TSCA CBI contained on manual and automated OTS information systems in order to perform the above-noted evaluation. Therefore, in accordance with 40 CFR 2.306(j), EPA has determined that access to CBI submitted to the Agency under all reporting provisions of TSCA is necessary for the satisfactory performance by the subcontractor of the subcontract described above. EPA is issuing this notice to inform submitters of information under TSCA that HRA has been authorized for access to CBI submitted under all TSCA reporting provisions pursuant to the "EPA Contractor Requirements for the Control and Security of TSCA Confidential Business Information" manual. CBI access will be authorized only at EPA headquarters and will expire on April 1, 1986.

Dated: November 22, 1985.

Edwin F. Tinsworth,

Acting Director, Office of Toxic Substances.

[FR Doc. 85-28699 Filed 12-2-85; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Frontier Communications, Inc., et al.; Hearing Designation Order

In re Applications of MM Docket No. 85-350:

	File No.
Frontier Communications, Inc., KLIP, Fowler, California: Has: 1220 kHz, 0.25 kW, D. Req: 1210 kHz, 0.5 kW, 10 kW-LS, DA-D, U.	BP-820202AJ
Stephen R. Little and Julie Hohn d/b/a Soquel Broadcasting Company, Soquel, California; Req: 1200 kHz, 1 kW, 25 kW-LS, DA-N, U.	BP-830502AI
Robert A. Jones & Patricia A. Kranz d/b/a J & K Broadcasters, Rocklin, California: Req: 1210 kHz, 0.5 kW, 10 kW-LS, DA-D, U.	BP 830502AJ
Robert R. Bignami, Orland, California: Req: 1210 kHz, 0.5 kW, 25 kW-LS, DA-D, U.	BP-830502AO

	File No.
Robert Adelman, Pismo Beach, California: Req: 1200 kHz, 1 kW, 5 kW-LS, DA-2, U.	BP-830502AR
Central Pacific Broadcasting of Nevada, Inc., Virginia City, Nevada: Req: 1200 kHz, 1 kW, 10 kW-LS, DA-2, U.	BP-830502AS

For Construction Permit.

Adopted: November 12, 1985.
Released: November 26, 1985.

By the Chief, Audio Services Division.

1. The Commission, by the Chief, Audio Services Division, acting pursuant to delegated authority, has under consideration (a) the above-captioned applications for new AM broadcast stations and for changes in the facilities of an existing AM broadcast station which are linked to each other either directly or indirectly through the presence of intervening interlocking proposals[1]; (b) petitions to deny the Soquel Broadcasting Company, Robert Adelman and Central Pacific Broadcasting of Nevada, Inc., Applications filed by KNBA, Inc.; and (c) relevant pleadings.[2]

2. *Petition to dismiss or deny.* KNBA, Inc., licensee of AM station KNBA, Vallejo, California, filed a petition to dismiss or deny the applications of Robert Adelman and Central Pacific Broadcasting of Nevada, Inc. claiming that the acceptance of these proposals violated the Commission's freeze on the filing of clear channel proposals. We do not agree. Mutually exclusive applications filed in response to a cut-off notice were specifically exempted from the freeze. The Adelman and Central Pacific proposals, filed in response to Frontier's cut-off notice, fell in this category. That these proposals were linked to Frontier's proposal indirectly through the filing of intervening, interlocking applications rather than directly, is of no legal consequence. Nor is it significant on equitable grounds that KNBA had intended to file an application for an unlimited time operation on 1200 kHz, but had considered the Commission's freeze an absolute barrier. Frontier's cut-off notice afforded the same opportunity to all potential applicants. If KNBA failed to anticipate its impact, the responsibility is its own. We will deny the petition to deny.

3. *Local Public Notice.* Section 73.3580 of the Commission's Rules requires broadcast applicants to give local notice of the filing of their applications. We have no evidence that Frontier Communications, Inc., and Robert A. Jones and Patricia A Kranz d/b/a J & K Broadcasters have complied with the rule. These applicants must comply with the rule, if they have not done so, and file the required certification of compliance with the presiding Administrative Law Judge within thirty days of the release of this Order.

4. *Site Photographs.* The applications of Robert R. Bignami, Robert Adelman and Central Pacific Broadcasting of Nevada, Inc., do not contain photographs of the proposed antenna sites as required by Section V-A, Question 8 of the application form (FCC Form 301). These applicants must, therefore, amend their applications and file the required site photographs with the presiding Administrative Law Judge within thirty days of the release of this Order.

5. *Environmental Matters.* The environmental narrative statements contained in the applications of Robert R. Bignami and Robert Adelman do not contain a complete description of the proposed antenna sites in that information concerning access roads and power lines as required by Section 1.1311(a)(2) of the Rules was omitted. Accordingly these applicants will be required to comply with the rules and file the required environmental information with the presiding Administrative Law Judge within thirty days of the release of this Order. In addition, a copy shall be filed with the Chief, Audio Services Division, who will then proceed regarding this matter in accordance with the provisions of § 1.1313(b). Section 1.1317 of the Rules will be waived to the extent that the comparative phase of the case will be allowed to begin before the environmental phase is completed. See *Golden State Broadcasting Corp.*, 71 F.C.C. 2d 229 (1979), *recon. denied sub nom. Old Pueblo Broadcasting Corp.*, 83 F.C.C. 2d 337 (1980).

6. *Stephen R. Little and Julie Hohn* d/b/a Soquel Broadcasting Company (Soquel). KNBA, Inc. filed a petition to deny alleging that the proposed operation would cause prohibited overlap with station KNBA in contravention of § 73.37(a) of the Commission's Rules. Petitioner claims that its allegations are supported by measurement data contained in a KNBA 1959 construction permit application. It has not supplied this information, however, and Commission files contain neither this data nor some February, 1982, measurements to which KNBA also refers. We have reviewed the application in light of the petition to deny and we find that the proposal will cause no prohibited overlap to station KNBA or to any other existing or authorized station. We will deny the petition to deny.

7. Soquel filed an amendment to its application on July 1, 1985; the last date on which an amendment could be filed as a matter of right ("B" cut-off date) was November 14, 1983. The amendment contains technical data and demonstrates that the Soquel application is not mutually exclusive with another. The amendment neither enhances the comparative position of the applicant nor diminishes the comparative position of any other applicant. We will accept the amendment for filing.

8. *Robert A. Jones & Patricia A. Kranz d/b/a J & K Broadcasters (J & K).* The J & K application does not contain the certification signature page (page 16) of the application form (FCC Form 301); thus the application is not signed by the applicant as required by § 73.3513 of the Rules. The application is, however, substantially complete and there are equities favoring acceptance of a curative amendment, namely the fact that the applicant did sign properly its equal employment opportunity and engineering certifications. See *Communications Gaithersburg, Inc.*, 60 F.C.C. 2d 537 (1976). Under these circumstances we will permit the applicant to submit an amendment to the presiding Administrative Law Judge to cure the minor defect within thirty days of the release of this Order.

9. J & K filed amendments to its application on June 6, 1984, and February 4, 1985. The last date on which amendments could be filed as a matter of right ("B" cut-off date) was November 14, 1983. The amendments contain broadcast ownership information and changes in marital status of the applicant's principals. The information is required to be filed by § 1.65 of the Commission's Rules and neither enhances the comparative position of the applicant nor diminishes the comparative position of any other applicant. We will accept the amendments for filing.

10. *Robert Adelman (Adelman).* Section 73.24(g) of the Commission's Rules requires that the population within the proposed 1 V/m contour be less than 300 persons or less than 1% of the population within the 25 mV/m contour. Question 10 of Section V-A of the application (FCC Form 301) requires

[1] Groups of this nature are commonly termed "daisy chains."

[2] These include motions for extensions of time in which to respond to various pleadings filed by Soquel Broadcasting Company, Robert Adelman, extensions of time are unopposed and are hereby granted.

applicants to state whether or not their applications conform to the rule; Adelman responded to the question in the negative and did not request waiver of the rule. Page 2 of the engineering statement attached to the application, in contrast, suggests compliance with § 73.24(g). We cannot determine under the circumstances if the application conforms to the rule. Adelman must therefore amend its application and demonstrate that its proposal conforms to § 73.24(g) of the Rules or request a waiver of the rule.

11. On February 13, 1984, Adelman filed a petition for leave to amend and an amendment to its application. The amendment is for the purpose of clarifying the name of the applicant and will confer no comparative advantage on the applicant nor diminish the comparative position of any other applicant. We will grant the petition for leave to amend and accept the amendment for filing.

12. *Central Pacific Broadcasting of Nevada, Inc. (Central).* On December 5, 1983, and December 10, 1984, Central filed petitions for leave to amend and amendments to its application. The 1983 amendment reported changes in broadcast interests of its principals and the 1984 amendment reported a change in the applicant's name. The amendments are in part required by § 1.65 of the Rules and will confer no comparative advantage to the applicant nor diminish the comparative position of any other applicant. We will grant the petitions for leave to amend and accept the amendments for filing.

13. Except as indicated by the issues specified below the applicants are qualified to construct and operate as proposed.[3] However, since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding. As the proposals are for different communities, we will specify issues to determine pursuant to section 307(b) of the Communications Act of 1934, as amended, which proposal (or combination of proposals) would best provide a fair, efficient and equitable distribution of radio service. We will also specify a contingent comparative issue, should such an evaluation of the proposals prove warranted.

[3] Operation with the facilities specified herein is subject to modification, suspension or termination without right to hearing, if found by the Commission to be necessary in order to conform to the Final Acts of the ITU Administrative Conference on Medium Frequency Broadcasting in Region 2, Rio de Janerio 1981, and to bilateral and other multilateral agreements between the United States and other countries.

14. Accordingly, it is ordered, that pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. If a final environmental impact statement is issued with respect to the proposal of Robert R. Bignami or Robert Adelman which concludes that the proposed facility is likely to have an adverse effect on the quality of the environment, to determine:

a. Whether the proposal is consistent with the National Environmental Policy Act, as implemented by §§ 1.1301–1319 of the Commission's Rules; and,

b. Whether, in light of the evidence adduced pursuant to (a) above, the applicant is qualified to construct and operate as proposed.

2. To determine: (a) the areas and populations which would gain or lose primary aural service from the proposal of Frontier Communications, Inc., and the availability of other primary service to such areas and populations, (b) the areas and populations which would receive primary aural service from the remaining proposals and the availability of other primary service to such areas and populations, and (c) in light thereof and pursuant to section 307(b) of the Communications Act of 1934, as amended, which of the proposals would best provide a fair, efficient and equitable distribution of radio service.

3. To determine, in the event it is concluded that a choice among the applicants should not be based solely on considerations relating to section 307(b), which of the proposals would, on a comparative basis, best serve the public interest.

4. To determine in light of the evidence adduced pursuant to the foregoing issues, which of the applications, if any, should be granted.

15. It is further ordered, that Frontier Communications, Inc., and Robert A. Jones & Patricia A. Kranz d/b/a J & K Broadcasters comply with § 73.3580 of the Commission's Rules, if they have not done so, and submit the required certification to the presiding Administrative Law Judge within thirty (30) days of the release of this Order.

16. It is further ordered, that Robert R. Bignami, Robert Adelman and Central Pacific Broadcasting of Nevada, Inc., file the required antenna site photographs with the presiding Administrative Law Judge within thirty (30) days of the release of this Order.

17. It is further ordered, that § 1.1317 of the Commission's Rules is waived to the extent indicated herein. Within thirty (30) days of the release of this Order, Robert R. Bignami and Robert Adelman shall submit environmental narrative statements containing the information (as set out in paragraph 5, *supra*) required by § 1.1311 of the Commission's Rules to the presiding Administrative Law Judge, with a copy to the Chief, Audio Services Division.

18. It is further ordered, that the petition to deny the application of Stephen R. Little and Julie Hohn d/b/a Soquel Broadcasting Company filed by KNBA, Inc., is denied.

19. It is further ordered, that the amendment filed on July 1, 1985, by Stephen R. Little and Julie Hohn d/b/a Soquel Broadcasting Company is accepted for filing.

20. It is further ordered, that Robert A. Jones & Patricia A. Kranz d/b/a J & K Broadcasters file the certification page (Page 16) of the application form (FCC Form 301) with the presiding Administrative Law Judge within thirty (30) days of the release of this Order.

21. It is further ordered, that the amendments filed by Robert A. Jones & Patricia A. Kranz d/b/a J & K Broadcasters on June 6, 1984, and February 4, 1985, are accepted for filing.

22. It is further ordered, that the petition to dismiss or deny the applications of Robert Adelman and Central Pacific Broadcasting of Nevada, Inc. filed by KNBA, Inc., is denied.

23. It is further ordered, that Robert Adelman file an amendment demonstrating that its application conforms to § 73.24(g) of the Commission's Rules (or request waiver of the rule) with the presiding Administrative Law Judge within thirty (30) days of the release of this Order.

24. It is further ordered, that the February 13, 1984, petition for leave to amend filed by Robert Adelman is granted and the concurrently filed amendment is accepted for filing.

25. It is further ordered, that the December 5, 1983, and December 10, 1984, petitions for leave to amend filed by Central Pacific Broadcasting of Nevada, Inc., are granted and the concurrently filed amendments are accepted for filing.

26. It is further ordered, that in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350,

1919 M Street, NW., Washington, DC 20554.

27. It is further ordered, that to avail themselves of the opportunity to be heard and pursuant to § 1.221(c) of the Commission's Rules, the parties shall within 20 days of the mailing of this Order, in person or by attorney, file with the Commission, in triplicate, written appearances stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

28. It is further ordered, that pursuant to section 311(a) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, the applicants shall give notice of the hearing as prescribed in the rules, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 85-28638 Filed 12-2-85; 8:45 am]

BILLING CODE 6712-01-M

Hearing Designation Order

In re Applications of MM Docket No. 85-355:

	File No.
Tri-State Broadcasting Co., Inc., Station KUKQ(AM), Tempe, Arizona. For Renewal of License.	BR-830609UH
Jack F. Grimm, Jackie B. Grimm, William H. Clifford, & Ruth G. Clifford, d/b/a Grimm & Clifford, Tempe, Arizona. Req: 1060 kHz, 0.5 kW, 5 kW-LS, DA-N, U. For Construction Permit.	BP-830831AB
Tri-State Broadcasting Co., Inc., Station KUPD-FM, Tempe, Arizona. For Renewal of License.	BRH-830609WZ
Jack F. Grimm, Jackie B. Grimm, William H. Clifford & Ruth G. Clifford, d/b/a Grimm & Clifford, Tempe, Arizona, Req: 97.9 MHz, Channel 250, 100 kW (H & V), 494 meters. For Construction Permit.	BPH-830831AI

Adopted: November 12, 1985.
Released: November 26, 1985.

By the Chief, Audio Services Division:

1. The Commission, by the Chief, Mass Media Bureau, acting pursuant to delegated authority, has before it for consideration the license renewal applications of Tri-State Broadcasting Co., Inc. (Tri-State), for station KUKQ(AM) and station KUPD-FM, Tempe, Arizona, and mutually exclusive construction permit applications for the facilities of KUKQ and KUPD, filed by Jack Grimm, Jackie Grimm, William Clifford and Ruth Clifford d/b/a Grimm & Clifford (G & C). Because the parties to both the AM and FM proceedings are the same, the cases shall be consolidated into one hearing pursuant to 47 CFR 1.227.

Tri-State has filed a petition to dismiss or deny the G & C construction permit application for the AM facility. G & C has filed an opposition and Tri-State has responded.[1]

3. Tri-State's petition argues that 1) the G & C application is fatally defective in that it contains no valid engineering proposal and 2) that the financial certification in the G & C application was not made in good faith. Tri-State claims that G & C's proposed use of KUKQ's existing facilities, i.e., the Beverly-Baseline studio and transmitter, is improper.[2] Tri-State acknowledges the Commission's decision in *George S. Cameron, Jr. Communications, Inc.*, 71 FCC 2d 460, 45 RR 2d 689 (1979), wherein the Commission held that "during the comparative proceeding, we will render conclusive the presumption that the renewal applicant's site will be available to a successful challenger." 71 FCC 2d at 467. However, Tri-State argues that the facts in *Cameron, supra*, differ significantly from the facts in the instant case and, thus, *Cameron* should not apply. Specifically, Tri-State argues that in *Cameron*, the site specified by the construction permit applicant was the same site the renewal applicant was currently using and intended to continue using if the license renewal was granted. In the instant case, G & C has not specified the site from which Tri-State intends to continue operating KUKQ if granted the license renewal (see note 2, *supra*), but rather has specified KUKQ's old site which the owners (some of whom are principals of Tri-State, see note 2, *supra*) intend to make available for commercial development. Tri-State claims that the decision to commercially develop the Beverly-Baseline site was an independent business judgment and was not made for the purpose of frustrating a competing applicant. Therefore, Tri-State claims that *Cameron* should not apply to this case. Furthermore, Tri-State argues that G & C did not act in good faith in specifying the Beverly-Baseline site because it never contacted the owners of the site to determine whether the site would be available for the proposed facility. Accordingly, Tri-State maintains that the application is not substantially complete and should be dismissed. *James River Broadcasting v. FCC*, 399 F. 2d 481 (D.C. Cir. 1968).

4. Tri-State also alleges that because G & C did not contact the owners to determine the availability of the Beverly-Baseline site, it could not possibly know how much it would cost to either lease or purchase the site. Therefore, Tri-State argues that G & C's certification that it has adequate funds to construct and operate the proposed AM facility for three months was not made in good faith.

5. In its opposition, G & C argues that the Tri-State petition is procedurally defective in that it does not meet the requirements of 47 U.S.C. 309(d) for a petition to deny because Tri-State did not provide specific factual allegations demonstrating that Tri-State is a party in interest and that grant of the G & C application would not be in the public interest. G & C also claims that Tri-State's petition must be dismissed because their argument is contrary to controlling Commission policy announced in *Kaye-Smith Enterprises*, 90 FCC 2d 105, 51 RR 2d 875 (1982), *Belo Broadcasting Corporation, et al.*, 88 FCC 2d 922, 50 RR 2d 806 (1981), and *George E. Cameron, supra*.

6. In response to the G & C opposition, Tri-State claims to have standing as the licensee of the station whose license G & C seeks to acquire. Tri-State also claims that G & C has apparently misunderstood the site availability issue and, therefore, has mistakenly relied on precedent which does not apply to the case at hand. Specifically, Tri-State argues that the cases cited by G & C involved situations where the competing applicant specified the site of the incumbent licensee who intended to continue using that site for its transmitter if the license renewal was granted. Since, however, G & C has not specified the same site which Tri-State intends to use to operate station KUKQ if granted the renewal, Tri-State argues that the presumption of site availability established in *Cameron, supra*, and

[1] Tri-State has also submitted a supplement to its reply and related affidavit in support thereof. As the supplement contains new material—notice of the recision of any option to acquire the transmitter site—it shall be considered newly discovered information, and therefore appropriate for supplemental treatment.

[2] By way of background, the Beverly-Baseline site is owned by Melnor Development Company whose principals, Robert L. Melton and John N. Norris, are also principals of Tri-State. On June 28, 1983, the Commission granted Tri-State authority to relocate its transmitter. Therefore, Tri-State does not intend to continue operating KUKQ from the Beverly-Baseline site.

followed in *Belo* and *Kaye-Smith, supra*, does not apply to this case.

7. We believe that Tri-State has standing to file the instant pleading. As the licensee of the station that G&C seeks to acquire, its potential injury is clear and direct. Moreover, Tri-State's allegations are supported by affidavits or declarations of personal knowledge. *Compare Telesis, Inc.*, 43 RR 2d 612 (1978); *See also* 47 CFR 1.16. Accordingly, pursuant to 47 U.S.C. 309(d), the Tri-State pleading shall be treated as a petition to deny.

8. Turning to the allegations made in the petition to deny, we find that Tri-State has failed to establish that the G&C application does not contain a valid engineering proposal or that G&C did not act in good faith in specifying the Beverly-Baseline site because it never contacted the site owner to determine whether the site would be available. Whenever an applicant specifies a site in its application, it must have reasonable assurance in good faith that the site specified will be available for the intended purpose. *United Television Co., Inc.*, 18 FCC 2d 363, 16 RR 2d 621 (1969). In the case of contested renewals, the Commission has established a conclusive presumption that the renewal applicant's site will be available to a successful challenger. *Cameron, supra*. In creating this presumption, the Commission's intent was to avoid inquiry into an incumbent licensee's motives for denying use of its site and to hold in abeyance any questions concerning a challenger's proposed transmitter site until a final determination is made as to which applicant would best serve the public interest. *Belo, supra*. Tri-State claims that the presumption established in *Cameron* would be improper in the instant case because Tri-State had obtained authority to relocate the KUKQ transmitter from the Beverly-Baseline site two months prior to G&C's filing of its mututally exclusive construction permit application. We note, however, that at the time the G&C application was filed, the Beverly-Baseline site was still the licensed site for KUKQ and the station was still being operated from that site.[3] In *Cameron, supra*, the Commission stated "that the key requirement in this area is simply that the applicant act in good faith." 71 FCC 2d at 467. There is no evidence in this case which indicates that G&C was acting in bad faith in specifying the Beverly-Baseline site.[4] In view of this fact and the fact that KUKQ was still being operated from the Beverly-Baseline site at the time G&C filed its application, we believe that G&C had "reasonable assurance" that the Beverly-Baseline site would be available for its use. Tri-State's claim that its decision to make the Beverly-Baseline site available for commercial development was unrelated to G&C's decision to challenge the KUKQ renewal is of no relevance. The Commission expressly stated in *Belo, supra*, that it did not wish to examine the motives of an incumbent licensee who claimed that its site would not be available to the challenger under any circumstances. Accordingly, no site availability issue will be specified. Should G&C be deemed comparatively superior, Tri-State will be permitted to present whatever evidence may be appropriate when and if G&C applies for a modification of its construction permit to specify a new site. The burden lies with G&C, if successful, to construct within specified time limits. *Kaye-Smith, supra*.

9. Turning to Tri-State's allegation concerning G&C's financial qualifications, we find no basis to specify an issue or consider any lack of good faith at this time. Since the adoption of our Rules regarding financial qualifications in 1981, applicants are permitted (in lieu of a full showing of financial ability) to certify that they have sufficient net liquid assests on hand or available from committed sources to consummate the transaction and operate the station for three months. The fact that G&C did not contact the owners of the Beverly-Baseline site to determine what it would cost to either lease or purchase the site does not indicate that G&C lacked good faith in certifying that it was financially qualified. C&C could reasonably estimate the cost of a lease or purchase agreement without contacting the site owner. Therefore, no further inquiry into this matter is necessary at this time.

10. G&C's construction permit application for the FM facility indicates that G&C will employ five or more full-time employees. Accordingly, G&C has submitted the equal employment opportunity program required by 47 CFR 73.2080. This program, however, is deficient in that no plan for dissemination of its equal employment opportunity policy is indicated. Thus, there is no indication of G&C's intention to communicate its equal employment opportunity policy to its staff or to inform them of their individual responsibilities in carrying it out. To correct this deficiency, G&C must file a suitable amendment within 30 days of the release of this order with the presiding Administrative Law Judge, or an appropriate issue will be specified.

11. Both G&C and Tri-State appear to be qualified to be Commission licensees. However, since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding.

12. Accordingly, it is ordered, That pursuant, to section 309(e) of the Communications Act of 1934, as amended, the applications of Tri-State Broadcasting Company, Inc., for renewal of license for stations KUKQ(AM) and KYPD-FM, Tempe, Arizona, and the construction permit applications of Grimm & Clifford are designated for consolidated hearing, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine which of the proposals would, on a comparative basis, better serve the public interest.

2. To determine, in light of the evidence adduced pursuant to the foregoing issue, which of the applications should be granted.

13. It is further ordered, That the "Petition to Dismiss or Deny Application", filed by Tri-State Broadcasting Company, Inc., is Denied.

14. It is further ordered, That, within 30 days of the release of this Order, G&C shall submit its plan of disseminating its equal employment opportunity policy in accordance with the requirements of § 73.2080(c) of the Commission's Rules to the presiding Administrative Law Judge.

15. It is further ordered, That, in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M Street, NW., Washington, D.C. 20554.

16. It is further ordered, That, to avail themselves of the opportunity to be heard, the applicants herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission in triplicate a written appearance stating an intention to appear on the date fixed

[3] Indeed, the Beverly-Baseline site is still the licensed site for KUKQ because no license has been issued to cover the construction permit which gave Tri-State authority to relocate its transmitter site.

[4] The fact that G&C did not contact the site owners regarding the availability of the Beverly-Baseline site does not alter this conclusion. In *Kaye-Smith, supra*, the Commission refused to specify a site availability issue against the construction permit applicant challenging a license renewal despite evidence (which the construction permit applicant did not dispute) demonstrating that the construction permit applicant had never contacted the site owner to determine if the site was available.

for the hearing and to present ev on the issue specified in this Order.

17. It is further ordered, That the applicants herein shall, pursuant to § 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give local notice of the hearing (either individually or, if feasible and consistent with the rules, jointly) within the time and in the manner prescribed in such rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 85-28639 Filed 12-2-85; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

[Agreement No. 124-010835]

Agreement Between the Port of Portland and Matson Navigation Company, Inc.; Correction

The **Federal Register** Notice published on October 8, 1985 (Vol. 50, No. 195, Pg. 41022), reflected the filing of Agreement No. 224-010835 pursuant to section 5, Shipping Act of 1984 (46 U.S.C. app. 1704).

The parties have subsequently amended the filing to reflect that it is made pursuant to section 15, Shipping Act, 1916 (46 U.S.C. 814). The agreement has been redesignated as Agreement No. 124-010835 and is being processed pursuant to section 15 of the 1916 Act.

By Order of the Federal Maritime Commission.

Dated: November 27, 1985.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85-28686 Filed 12-2-85; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Ameritrust Corp. et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 20, 1985.

A. **Federal Reserve Bank of Cleveland** (Lee S. Adams, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Ameritrust Corporation*, Cleveland, Ohio; to engage *de novo* through its subsidiary, AT Acceptances Corporation, Cleveland, Ohio, in making, acquiring, or servicing loans or other extensions of credit for its own account or for the account of others, including the purchase and sale of installment loan contracts from automobile dealers and other extensions of credit such as would be made by a consumer finance company, pursuant to § 225.25(b)(1)(i) of Regulation Y.

2. *Mellon Bank Corporation*, Pittsburgh, Pennsylvania; to engage *de novo* through its subsidiary, Mellon Brokerage Services Corp., Pittsburgh, Pennsylvania, in securities brokerage services, including related securities credit activities and incidental activities such as offering custodial services, IRAs, Keoghs and cash management services, pursuant to § 225.25(b)(15) of Regulation Y. The proposed brokerage services would be restricted to buying and selling securities solely as agent for the account of customers and do not include securities underwriting, dealing, investment advice, or research services.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *Brantley Bancorp, Inc.*, Brantley, Alabama; to engage *de novo* directly in making, acquiring, or servicing loans or other extensions of credit (including issuing letters of credit and accepting drafts) for the company's account or for the account of others, such as would be made, for example, by the following types of companies: consumer finance; credit card; mortgage; commercial finance; and factoring, pursuant to § 225.25(b)(1) of Regulation Y. Applicant also proposes to engage in the sale of insurance that is directly related to an extension of credit by a bank or bank-related firm of the kind described in the regulation, or is directly related to the provision of other financial services by a bank or such a bank-related firm, pursuant to § 225.25(b)(8)(i) of Regulation Y. Comments on this application must be received not later than December 18, 1985.

2. *Third National Corporation*, Nashville, Tennessee; to engage *de novo* through its subsidiary, ThirdData Corporation, Nashville, Tennessee, in data processing activities, pursuant to § 225.25(b)(7) of Regulation Y.

C. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Valley Bancorporation*, Appleton, Wisconsin; to engage *de novo* through its subsidiary, Valley Brokerage Services, Inc., Appleton, Wisconsin, in providing securities brokerage services, related securities credit activities and incidental activities, but only to the extent permissible under § 225.25(b)(15) of Regulation Y. Securities brokerage services will be limited to buying and selling securities solely as agent for the account of others as a "discount broker" and will not include securities underwriting or dealing or investment advice or research services. Comments on this application must be received not later than December 18, 1985.

Board of Governors of the Federal Reserve System, November 27, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-28735 Filed 12-2-85; 8:45 am]

BILLING CODE 6210-01-M

Communicorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than December 24, 1985.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Communicorp, Inc.*, Addison, New York; to become a bank holding company by acquiring 100 percent of the voting shares of Community National Bank, Addison, New York.

2. *First Glen Bancorp Inc.*, Glens Falls, New York; to acquire 100 percent of the voting shares of The Peoples Commercial Bank, East Greenbush, New York.

B. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First Peoria Corp.*, Peoria, Illinois; to acquire 100 percent of the voting shares of Peoples State Bank of Roanoke, Roanoke, Illinois.

2. *Solon Financial, Inc.*, Solon, Iowa; to become a bank holding company by acquiring at least 80.1 percent of the voting shares of Solon State Bank, Solon, Iowa.

C. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *International Bancshares Corporation*, Laredo, Texas; to acquire 100 percent of the voting shares of Intercontinental National Bank-Starcrest, San Antonio, Texas.

Board of Governors of the Federal Reserve System, November 27, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-28736 Filed 12-2-85; 8:45 am]

BILLING CODE 6210-01-M

FNB Shares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than December 23, 1985.

A. **Federal Reserve Bank of Cleveland** (Lee S. Adams, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *FNB Shares, Inc.*, McConnelsville, Ohio; to become a bank holding company by acquiring 100 percent of the voting shares of The First National Bank of McConnelsville, McConnelsville, Ohio.

B. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Sovran Financial Corporation*, Norfolk, Virginia; to merge with D.C. National Bancorp, Inc., Washington, D.C., thereby indirectly acquiring District of Columbia National Bank, Washington, D.C.

C. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *F&M Financial Corp.*, Piedmont, Alabama; to become a bank holding company by acquiring 100 percent of the voting shares of Farmers & Merchants Bank, Piedmont, Alabama.

2. *SouthTrust Corporation*, Birmingham, Alabama; to acquire 60 percent of the voting shares of The Bank of Ozark, Ozark, Alabama. Comments on this application must be received not later than December 20, 1985.

D. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *North Vernon 1st Financial Corporation*, North Vernon, Indiana; to become a bank holding company by acquiring 100 percent of the voting shares of The First National Bank of North Vernon, North Vernon, Indiana.

2. *Old Second Bancorp, Inc.*, Aurora, Illinois; to acquire 100 percent of the voting shares of The Yorkville National Bank, Yorkville, Illinois.

E. **Federal Reserve Bank of Minneapolis** (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Hutchinson Bancorp, Inc.*, Minneapolis, Minnesota; to acquire 98.57 percent of the voting shares of Fidelity State Bank of Fairfax, Fairfax, Minnesota. Comments on this application must be received not later than December 20, 1985.

2. *Hutchinson Bancorp, Inc.*, Minneapolis, Minnesota; to acquire 98.38 percent of the voting shares of Fidelity State Bank of Hector, Hector, Minnesota. Comments on this application must be received not later than December 20, 1985.

3. *Hutchinson Bancorp, Inc.*, Minneapolis, Minnesota; to acquire 98.75 percent of the voting shares of Fidelity State Bank of New Prague, New Prague, Minnesota. Comments on this application must be received not later than December 20, 1985.

4. *SWH Bancorp, Inc.*, Edina, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of Southwest Fidelity State Bank of Edina, Edina, Minnesota. Comments on this application must be received not later than December 20, 1985.

F. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Citizen Dimension Bancorp, Inc.*, Muskogee, Oklahoma; to acquire 13.4 percent of the voting shares of Charter Bancshares, Inc., Oklahoma City,

Oklahoma, thereby indirectly acquiring Charter National Bank, Oklahoma City, Oklahoma.

G. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Texas Regional Bancshares, Inc.*, McAllen, Texas; to acquire 100 percent of the voting shares of Mid Valley Bank, Weslaco, Texas.

Board of Governors of the Federal Reserve System, November 27, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-28737 Filed 12-2-85; 8:45 am]

BILLING CODE 6210-01-M

Firstier, Inc., Acquisition of Company Engaged in Permissible Nonbanking Activities

The ogranization listed in this notice has applied under §225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and §225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in §225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 24, 1985.

A. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Firstier, Inc.*, Omaha, Nebraska; to acquire Firstier Data Services, Inc., Omaha, Nebraska, and thereby engage in the provision of data processing and transmission services, facilities, data bases, or access to such in accordance with the provisions of §225.25(b)(7) of Regulation Y. These activities would be conducted in the states of Nebraska, Iowa, Kansas, South Dakota, Colorado, Wyoming, and Montana.

Board of Governors of the Federal Reserve System, November 27, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-28738 Filed 12-2-85; 8:45 am]

BILLING CODE 6210-01-M

Green Mountain Financial Services Corp.; Formation of; Acquisition by; or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.24) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than December 12, 1985.

A. **Federal Reserve Bank of Boston** (Richard E. Randall, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Green Mountain Financial Services Corporation*, Wilmington, Delaware; to acquire 20.83 percent of the voting shares of The Green Mountain Bank, Winhall Township (Bondville), Vermont.

Board of Governors, Federal Reserve System, November 27, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 28739, Filed 12-2-85; 8:45 am]

BILLING CODE 6210-01-M

Old Kent Financial Corp. et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each applications is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than December 23, 1985.

A. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60609:

1. *Old Kent Financial Corporation,* Grand Rapids, Michigan; to acquire Old Kent Brokerage Services, Inc., Grand Rapids, Michigan and thereby engage in securities brokerage services, pursuant to § 225.25(b)(15) of Regulation Y. Applicant proposes to transfer these services from its bank subsidiary, Old Kent Bank & Trust Company, Grand Rapids Michigan to Old Kent Brokerage Services, Inc. The bank formerly acquired the business and certain assets from National Financial Services Corporation, Grand Rapids, Michigan.

B. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *United Bancshares, Inc.,* Rosenburg, Texas; to acquire Associated Investors Life Insurance Company, Houston, Texas, and thereby engage in the underwriting of credit life, credit accident and health insurance that is directly related to an extension of credit by the bank holding company system, pursuant to § 225.25(b)(9) of Regulation Y. These activities are to be conducted in the State of Texas. Comments on this application must be received not later than December 20, 1985.

Board of Governors of the Federal Reserve System, November 27, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-28740 Filed 12-2-85; 8:45 am]

BILLING CODE 6210-01-M

Quality Financial Services Corp.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23)(a)(2) or (f) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 18, 1985.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Quality Financial Services Corp.,* Alexandria, Tennessee; to acquire George W. Corley and Son Insurance Agency, Alexandria, Tennessee, and thereby engage in general insurance agency activities in a place with a population not exceeding 5,000, pursuant to section 4(c)(8)(i) of the Act. Applicant also proposes to engage in general insurance agency activities, except the sale of life insurance and annuities, pursuant to section 4(c)(8)(F) of the Act. Quality Financial Services Corp. has total assets of $50,000,000 or less. These activities would be conducted in the State of Tennessee, and the principal market area would be Alexandria, Tennessee, and Smithville, Tennessee.

Board of Governors of the Federal Reserve System, November 27, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-28741 Filed 12-2-85; 8:45 am]

BILLING CODE 6210-01-M

Sovran Financial Co.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under section 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2) of the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engaged in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that ae in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 26, 1985.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Sovran Financial Corporation,* Norfolk, Virginia; to merge with Suburban Bancorp, Bethesda, Maryland, thereby indirectly acquiring Suburban Bank, Bethesda, Maryland.

Applicant has also applied to acquire Suburban Funding Corporation, Bethesda, Maryland, and thereby engage in commercial financing; making, acquiring, and/or servicing for its own account and for the account of others, loans and leases of real and personal property; and arranging financing, financial structuring and analysis with respect to equipment leasing, pursuant to §§ 225.25(b)(1) and (5).

Board of Governors of the Federal Reserve System, November 27, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-28742 Filed 12-2-85; 8:45 am]

BILLING CODE 6210-01-M

Agency Forms Under Review

November 27, 1985.

Background

Notice is hereby given of final approval of proposed information collection(s) by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.9 (OMB Regulations on Controlling Paperwork Burdens on the Public).

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Cynthia Glassman—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202-452-3822)

OMB Desk Officer—Robert Neal—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503 (202-395-6880)

Proposal to approve under OMB delegated authority the extension without revision of the following reports:

1. *Report title:* Quarterly Report of Interest Rates on Selected Direct Consumer Installment Loans
Agency form number: FR 2835
OMB Docket number: 7100-0085
Frequency: Quarterly
Reporters: Commerical banks
Small businesses are not affected.
General description of report:

This information collection is voluntary [12 U.S.C. 248(a)(2)] and is not given confidential treatment.

This report collects interest rate information on selected consumer installment loans from a sample of member banks. Information provided by this report is needed in assessing interest rate developments, and used in general financial analysis for monetary policy purposes.

2. *Report title:* Quarterly Gasoline Company Report
Agency form number: FR 2580
OMB Docket number: 7100-0009
Frequency: Quarterly
Reporters: Gasoline companies
Small business are not affected.
General description of report:

This information collection is voluntary [12 U.S.C. 353 et. seq., 263, and 461] and is given confidential treatment [5 U.S.C. 552(b)(4)].

This report collects the amount outstanding of retail credit card accounts at gasoline companies. These data are included in the installment credit component of total consumer credit which is used by the Federal Reserve in general financial analysis for monetary policy purposes.

Proposal to approve under OMB delegated authority the implementation of the following report:

1. *Report title:* Semi-Annual Report of Sender Net Debit Cap
Agency form number: FR 2226
OMB Docket number: 7100-0217
Frequency: Semi-annually.
Reporters: Depository Institutions.
Small businesses are not affected.
General description of report:

This information collection is voluntary and is given confidential treatment [5 U.S.C. 552(b)(4)].

The Federal Reserve System will gather information from institutions on Fedwire and on private large-dollar wire networks. Respondents will report a cross-system sender net debit cap based on adjusted primary capital.

Board of Governors of the Federal Reserve System, November 27, 1985.

William W. Wiles,

Secretary of the Board.

[FR Doc. 85-28732 Filed 12-2-85; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvement Act of 1976, requires persons contemplating certain mergers or acquisition of give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period:

Transaction	Waiting period terminated effective
(1) 85-1155—NTN Toyo Bearing Co., Ltd. proposed acquisition of voting securities of NTN Bower Corporation, (Federal-Mogul Corporation, UPE).	Nov. 14, 1985.
(2) 86-0058—Westwood One, Inc.'s (Norman J. Pattiz, UPE) proposed acquisition of assets of Amway Corporation.	Nov. 6, 1985.
(3) 86-0117—United States Steel Corporation's proposed acquisition of Airco Industrials Gases Division, (The BOC Group, plc, UPE).	Nov. 7, 1985.
(4) 86-0067—USA Cafes' proposed acquisition of voting securities of Ponderosa, Inc.	Nov. 8, 1985.
(5) 86-0073—Beneficial Corp.'s proposed acquisition of assets of Home Federal Savings and Loan Assoc.	Do.
(6) 86-0104—Manufacturing Acquisition Associates, LP's proposed acquisition of voting securities of Raypak, Inc., (William N. Austin, UPE).	Do.
(7) 86-0135—Archer-Daniels Midland Company's proposed acquisition of voting securities or assets of Farmers Export Company.	Do.
(8) 86-0140—Jim Walter Corp's proposed acquisition of voting securities of Sanford Brick Corp. and Cherokee Brick Co., of N.C., (Thomas F. Darden, II UPE).	Do.
(9) 86-0168—Marc A. Odermatt's proposed acquisition of Open Grounds Farm, Inc., (Agricola Industriale Finanziaria Armatoriale Holding SA., (Open Grounds Farm, Inc., UPE).	Do.
(10) 86-0206—Berkshire Hathaway, Inc.'s proposed acquisition of voting securities of The Scott & Fetzer Company.	Do.
(11) 86-0119—IFINT S.A.'s proposed acquisition of assets of SBH Corporation and SBH/East Corporation, (Stephen B. Herrick, UPE).	Nov. 12, 1985.
(12) 86-0131—Reichmann Holdings Limited's proposed acquisition of voting securities of Gulf Canada Limited.	Do.
(13) 86-0132—Reichmann Holdings Limited's proposed acquisition of voting securities of Gulf Canada Limited.	Do.
(14) 86-0136—The Coca-Cola Company's proposed acquisition of voting securities of The Walter Reade Organization, Inc.	Do.
(15) 86-0142—Avon Products, Inc.'s proposed acquisition of voting securities of Retirement Inns of American, (Safeco Corporation, UPE).	Do.
(16) 86-0149—Telepictures Corporation's proposed acquisition of voting securities of Lorimar, Inc.	Do.
(17) 86-0150—Telepictures Corporation's proposed acquisition of voting securities of Lorimar, Inc.	Do.
(18) 86-0151—Merv Adelson's proposed acquisition of voting securities of Telepictures Corporation.	Do.
(19) 86-0152—Lee Rich's proposed acquisition of voting securities of Telepictures Corporation.	Do.
(20) 86-0166—Lorimar, Inc.'s proposed acquisition of voting securities of Telepictures Corporation.	Do.
(21 86-0182—Wang Laboratories, Inc.'s proposed acquisition of assets of Walsh Greenwood Information Systems, Inc., (Walsh Greenwood and Co., UPE).	Do.
(22) 86-0189—Union Pacific Corp.'s proposed acquisition of voting securities of Nemo Coal, Inc., (Floyed E. Riley, UPE).	Do.
(23) 86-0212—Thomson S.A.'s proposed acquisition of assets of Mostek Corp., (United Technologies Corp., UPE).	Do.
(24) 86-0064—Bitzerian & Broadovsky's proposed acquisition of voting securities Cluett, Peabody & Co., Inc.	Nov. 13, 1985.

Transaction	Waiting period terminated effective
(25) 86-0156—Dibrell Brothers, Inc.'s proposed acquisition of voting securities of Liggett & Myers do Brasil Cigarros Ltda., (Grand Metropolitan PLC, UPE).	Do.
(26) 86-0178—Colt Industries, Inc.'s proposed acquisition of voting securities of Walbar, Inc.	Do.
(27) 86-0181—Colt Industries, Inc.'s proposed acquisition of voting securities of Walbar, Inc.	Do.
(28) 86-0188—Proposed consolidation of Allnet Communication Services, Inc. and Lexitel Corporation.	Do.
(29) 86-0191—Melvyn J. Goodman's proposed acquisition of voting securities of Alex Corp.	Do.
(30) 86-0192—Philip D. Goodman's proposed acquisition of voting securities of Alex Corp.	Do.
(31) 86-0193—Kansas City Southern Industries, Inc.'s proposed acquisiton of voting securities of Alex Corp.	Do.
(32) 86-0194—Michael P. Richer's proposed acquisition of voting securities of Alex Corp.	Do.
(33) 86-0105—Bennett S. LeBow's proposed acquisition of voting securities of Idle Wild Foods, Inc.	Nov. 14, 1985.
(34) 86-0226—Eastern Gas and Fuel Associates's proposed acquisition of voting securities of Nicor Mining, Inc. and Cameo Minerals, Inc. (Nicor, Inc., UPE).	Do.
(35) 86-0227—Nicor Inc.'s proposed acquisition of assets of Powderhorn Properties Co. and voting securities of Beacon Coal Corp.	Do.
(36) 86-0157—Hillenbrand Industries, Inc.'s proposed acquisition of voting securities and assets of Support Systems International.	Nov. 16, 1985.

For further information contact: Sandra M. Peay, Legal Technician, Premerger Notification Office, Bureau of Competition, Room 301, Federal Trade Commission, Washington, DC 20580, (202) 523-3894.

By direction of the Commission.

Emily H. Rock,

Secretary.

[FR Doc. 85-28623 Filed 12-2-85; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice Regarding Requirement for Submission of List of Ingredients Added to Tobacco in Cigarettes

AGENCY: Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: This notice implements the requirement of the Federal Cigarette Labeling and Advertising Act that each person who manufactures, packages, or imports cigarettes shall annually provide the Secretary of HHS with a list of ingredients added to tobacco in the manufacture of cigarettes.

DATES: The lists are required to be provided to HHS April 2, 1986, and annually thereafter by December 31, beginning with December 31, 1986.

ADDRESS: The list shall be submitted to: Director, Office on Smoking and Health, Park Building, Room 1-10, 5600 Fishers Lane, Rockville, Maryland 20857.

FOR FURTHER INFORMATION CONTACT: Donald R. Shopland, Acting Director, Office on Smoking and Health, (301) 443-1575.

SUPPLEMENTARY INFORMATION: Section 5(a) of Pub. L. 98-474 added a new section 7 to the Federal Cigarette Labeling and Advertising Act. That Section requires manufacturers, importers, and packagers of cigarettes to provide the Secretary of HHS annually with a list of all ingredients added to tobacco in the manufacture of cigarettes. The list shall not identify the company which uses the ingredients or the brand of cigarettes which contain the ingredients.

The list shall be provided reporting each ingredient by chemical name and chemical abstract service (CAS) registry number. A person or group of persons required to provide a list may designate an individual or entity to provide the list on their behalf. In such case, the designated individual or entity shall identify the person or group of persons on whose behalf the list is submitted.

In accordance with section 7, procedures for assuring the confidentiality of the information are available. A copy of these procedures may be obtained by written request to the address stated above. The information submitted will be treated as trade secret or confidential information subject to 5 U.S.C. 552(b)(4) and 18 U.S.C. 1905. Access to the information will be limited to those authorized by the Secretary in carrying out their official duties and, upon their request, to duly authorize committees or subcommittees of the Congress.

Dated November 4, 1985.

James O. Mason,

Acting Assistant Secretary for Health.

Dated November 25, 1985.

Margaret M. Heckler,

Secretary of Health and Human Service.

Guidelines To Control and Protect Documents That Contain Privileged Information Obtained in Accordance With Sec. 5(a) of Pub. L. 98-474

1. Purpose

This guide establishes minimum requirements to control and protect those documents that contain privileged information. Its objective is to establish individual responsibility for the accountability and protection of privileged information provided to the Secretary, Department of Health and Human Services, specifically that information on the ingredients added to tobacco in the manufacture of cigaretts as called for under Pub. L. 98-474. This document is directed at setting forth specific conditions governing access to privileged information, including trade secret data.

2. Policy

The Department of Health and Human Services recognizes that trust placed in it under the requirements of the Federal Statutes with respect to safeguarding privileged information. Employees of the Department of Health and Human Services shall take such action as may be necessary to preclude a breach of this trust. Privileged information shall be released only to employees of the Department as described herein, unless otherwise authorized by law or by the source of the information. Any Freedom of Information Act request for information obtained by the Department under section 5(a) of Pub. L. 98-474 shall be referred to the Freedom of Information Officer of the Public Health Service. In accordance with the provisions of 5 U.S.C. 552(b)(3) and 552(b)(4), 18 U.S.C. 1905, section 7(b)(2)(A) of Pub. L. 98-474, and 42 CFR 5.71, the Freedom of Information Officer shall deny any such requests. Any request for such information that is not submitted under the Freedom of Information Act shall be referred to the Director of the Officer on Smoking and Health. With the exception of duly authorized request by a committee or subcommitte of Congress made in accordance with section 7(b)(2)(B) of Pub. L. 98-474, any such request shall be denied.

3. Statutory Requirements

Statutory requirements for safeguarding privileged information entrusted to the Department of Health and Human Services are contained in the following:

a. Section 7(b)(2)(A) of the Federal Cigarette Labeling and Advertising Act.

b. Section 1905, Title 18 U.S.C. Crimes and Criminal Procedure (18 U.S.C. 1905).

c. Section 552(b)(4), Title 5, U.S.C.

4. Definitions

a. *Document Control Officer.* That individual who has been designated in writing as having the responsibility for the organization's secret document control. The Document Control Officer shall be the Director, Office on Smoking and Health.

b. *Privileged Information.* As used in this Guide, privileged information refers to(i) any information provided to the Department of Health and Human Services in accordance with section 7 of the Federal Cigarette Labeling and Advertising Act, as added by section 5(a) of Pub. L. 98–474, the Comprehensive Smoking Education Act, and (ii) any other materials derived from the information provided.

c. *Secure Files Area.* A room of rooms that are locked during non-duty hours.

d. *Secure Files Containers.* Any equipment that is locked when unattended and that cannot be hand carred (e.g., Power Files and Lektrievers, filing cabinets and shelf units, credenzas, desk pedestals, etc.).

5. Responsibilities

The Director, Office of Smoking and Health shall:

(1) Advise, in writing, appropriate constituent units of the Department of Health and Human Services of the action they must take in order that the provisions of this Guide will be met.

(2) Maintain and verify the operation of an effective document control system.

(3) Assure adherence to the requirements established by this guide.

(4) Investigate reports of overdue documents.

6. Persons Authorized to Have Access to Privileged Information

The following may be granted access to privileged information under the conditions specified.

a. *Department Employees.* Upon authorization from the Director of the Office on Smoking and Health in the form of Attachment C, regular or special employees of the Department are permitted access to information needed in the performance of their official duties. Any employee permitted such access shall, prior to receiving privileged information, read and execute a Commitment to Protect Confidential Information, in the form of Attachment A.

b. In accordance with the provisions set forth in section 7 of the Federal Cigarette Labeling and Advertising Act, as added by Pub. L. 98–474, the Department will make available the list submitted under that Act to a committee or subcommittee of Congress upon a duly authorized request by such committee or subcommittee and shall, at the same time, notify the person who provided the list of such request. Such notice shall be in writing, and the Department will take reasonable measures to ensure that the notice is transmitted to such person as promptly as possible.

Users of files containing privileged information are responsible for complying with established procedures of accountability as prescribed by the Document Control Officer and for protecting borrowed files in accordance with this Guide.

7. Document Accountability

Persons accessing privileged information shall present to the Document Control Office appropriate authorization as indicated by attachement "C" of this Guide, an executed Commitment to Protect Confidential Information in the form of Attachment A, and an acceptable means of personal identification.

a. *Charge-Outs.* When privileged information documents are charged out, the signature of the recipient will be obtained on a receipt bearing the document number and other identifying information. The receipt shall be in the form of Attachment B. RESPONSIBILITY FOR THE FILE REMAINS WITH THE PERSON WHOSE NAME APPEARS ON THE RECEIPT. Receipts shall be kept current so that the document can be readily located.

b. *Control Followup and Vertification of Locations.* The Document Control Officer shall require the return of each document at the conclusion of the period stipulated on the receipt. If use of the document is necessary for an additional period, the Director will prepare a new authorization in the form of Attachment C and the employee will sign a new receipt in the form of Attachment B.

c. *Report of Lost Documents.* The Director, Office on Smoking and Health shall immediately be notified in writing when privileged information files cannot be located after a search has been made. The notification shall include:

(1) The identification and description of each missing file,

(2) The name and organizational location of the individual to whom the files were last charged, and

(3) A summary of the efforts that have been made to locate the missing file.

8. Document Protection

Document protection shall include the following:

a. *During Working Hours.* When not in actual use by an authorized employee, privileged information shall be protected by using the protective measures required for non-working hours.

b. *During Non-Working Hours.* All privileged information must be locked in an approved secure files area or in an approved secure files container during non-working hours.

9. Transfer of Privileged Information

Method of Transmission. The preferred method is person to person transmission. When this is not practicable, the privileged information is to be sent through the U.S. Registered Mail system, unless a written exception has been obtained on an individual basis from the Director, Office on Smoking and Health.

10. Document Reproduction

Privileged information documents will be reproduced only as required in the performance of official business, and only by the Director, Office on Smoking and Health.

11. Document Disposition

The documents provided to the Department in accordance with Section 7, of the Federal Cigarette Labeling and Advertising Act, as added by section 5(a) of Pub. L. 98–474, the Comprehensive Smoking Education Act shall be maintained in accordance with the Office of the Assistant Secretary for Health, Public Health Service Records Control Schedule, section 3, Special Staff Programs.

12. Violation

The loss or misuse of privileged information may seriously hamper the Department of Health and Human Services in the conduct of its mission. Employees failing to comply to with the provisions of this Guide or of established control systems are subject to action commensurate with the seriousness of the violation, including disciplinary action and criminal penalties under 18 U.S.C. 1905.

Attachment A—Commitment To Protect Confidential Information on the Ingredients Added to Tobacco in the Manufacture of Cigarettes

Whereas access to confidential information in the files of the Public Health Service is required in the performance of official duties, I _____, on this ____ day of _____ 19__, hereby agree that I shall not further release, publish, copy, or disclose such information, and that I shall protect such information in accordance with the provisions of 18 U.S.C. 1905, 5 U.S.C. 52(b)(4), and the Public Health Service Guide for the Control of Confidential Information on the Ingredients Added to Tobacco in the Manufacture of Cigarettes.

I understand the provisions of 18 U.S.C. 1905, 5 U.S.C. 552(b)(4), and the PHS guide, and that I am subject to penalties prescribed by law for any violations thereof.

Signed: _____
Date: _____
Witnessed by: _____
Date: _____

Attachment B—Receipt for Confidential Information on the Ingredients Added to Tobacco in the Manufacture of Cigarettes

To: Director, Office on Smoking and Health, Office of the Assistant Secretary for Health, Rockville, Maryland 20857

From:

Receipt of the following privileged information is hereby acknowledged:

File # _____
Description of Information _____
Anticipated Date of Return _____
Date: _____
Signature: _____

Attachment C—Authority To Remove Confidential Information on the Ingredients Added to Tobacco in the Manufacture of Cigarettes

_____ (name) of _____ (government agency or office) is hereby granted the authority to have the following privileged information in his/her personal possession from ____ (hours), _____ (date) to _____ (hours), _____ (date).

Described Privileged Information:
Document Number:
Title:

This information will be used for:

Authorized by: _____
Director, Office on Smoking and Health
Date: _____

[FR Doc. 85-28716 Filed 12-2-85; 8:45 am]
BILLING CODE 4160-17-M

Food and Drug Administration

Midicel® Tablets; Withdrawal of Approval of NADA

AGENCY: Food and Drug Administration.
ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of a new animal drug application (NADA) sponsored by Parke-Davis covering use of Midicel® Tablets (sulfamethoxypyridazine) in treating dogs and cats for sulfa-susceptible, gram-positive and gram-negative, bacterial infections. The sponsor requested the withdrawal of approval.

EFFECTIVE DATE: December 13, 1985.

FOR FURTHER INFORMATION CONTACT: John K. Augsburg, Center for Veterinary Medicine (HFV-216), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4093.

SUPPLEMENTARY INFORMATION: Parke-Davis, Division of Warner-Lambert Co., 201 Tabor Rd., Morris Plains, NJ 07950, is sponsor of NADA 12-821 for use of Midicel® Tablets (sulfamethoxypyridazine) in treating dogs and cats for sulfa-susceptible, gram-positive and gram-negative, bacterial injections.

The application was originally approved February 8, 1963. In a letter dated August 7, 1985, the firm requested withdrawal of approval of the NADA because the drug is no longer being marketed.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(e), 82 Stat. 345-347 (21 U.S.C. 360b(e)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.84), and in accordance with § 514.115 *Withdrawal of approval of applications* (21 CFR 514.115), notice is given that approval of NADA 12-821 for Midicel® Tablets (sulfamethoxypyridazine) is hereby withdrawn, effective December 13, 1985.

In a final rule published elsewhere in this issue of the **Federal Register**, the regulation reflecting this approval is removed.

Dated: November 26, 1985.

Gerald B. Guest,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 85-28634 Filed 12-2-85; 8:45 am]
BILLING CODE 4160-01-M

Vortech Pharmaceuticals, Ltd.; Dichlorophene and Toluene Capsules; Withdrawal of Approval

AGENCY: Food and Drug Administration.
ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of a new animal drug application (NADA) sponsored by Vortech Pharmaceuticals, Ltd. (formerly sponsored by North American Pharmacal), for dichlorophene and toluene capsules. The firm requested the withdrawal of approval.

EFFECTIVE DATE: December 13, 1985.

FOR FURTHER INFORMATION CONTACT: John Augsburg, Center for Veterinary Medicine (HFV-216), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4093.

SUPPLEMENTARY INFORMATION: Vortech Pharmaceuticals, Ltd., P.O. Box 189, Dearborn, MI 48121, informed FDA, by letter dated July 28, 1983, that it had purchased the assets of North American Pharmacal, 6851 Chase Rd., Dearborn, MI 48126, in June 1982. At the time it was purchased, North American Pharmacal was the sponsor of NADA 110-736 for PETAVERM Capsules (dichlorophene and toluene) labeled as an anthelmintic for dogs and cats.

Vortech Pharmaceuticals, Ltd., stated, by letter dated July 8, 1985, that PETAVERM has never been brought to market and is not in use, and the company requested that the drug be withdrawn.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(e), 82 Stat. 345-347 (21 U.S.C. 360b(e))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.84) and in accordance with § 514.115 *Withdrawal of approval of applications* (21 CFR 514.115), notice is given that approval of NADA 110-736 and all supplements thereto is hereby withdrawn, effective December 13, 1985.

In a final rule published elsewhere in this issue of the **Federal Register**, FDA is removing that portion of the regulations that reflects this NADA approval.

Dated: November 26, 1985.

Gerald B. Guest,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 85-28632 Filed 12-2-85; 8:45 am]
BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. I-85-136]

Intended Environmental Impact Statement

The Department of Housing and Urban Development gives notice that an Environmental Impact Statement (EIS) is intended to be prepared by the cities of Auburn Hills and Rochester Hills, Oakland County, Michigan, for the Oakland Technology Park under the HUD programs as described in the appendix of the Notice. This notice is required by the Council on Environmental Quality under its rule (40 CFR Part 1500).

Interested individuals, governmental agencies, and private organizations are invited to submit information and comments concerning the particular project to the specific person or address indicated in the appropriate part of the appendix.

Particularly solicited is information on reports or other environmental studies planned or completed in the project

area, issues and data which the EIS should consider, recommended mitigating measures and alternatives, and major issues associated with the proposed project. Federal agencies having jurisdiction by law, special expertise or other special interests should report their interests and indicate their readiness to aid the EIS effort as a "cooperating agency."

This Notice shall be effective for one yera. If one year after the publication of a Notice in the **Federal Register**, a Draft EIS has not been filed on a project, then the Notice for that project shall be cancelled. If a Draft EIS is expected more than one year after the publication of the Notice in the **Federal Register**, then a new and updated Notice of Intent will be published.

Issued at Washington, DC, November 18, 1985.

Dorothy S. Williams,

Deputy Director, Office of Environment and Energy.

Appendix

EIS on the Oakland Technology Park

The Michigan Department of Commerce in coordination with the cities of Auburn Hills and Rochester Hills intends to prepare an Environmental Impact Statement (EIS) on the project described below and solicits comments and information for consideration in the EIS.

Description: The Oakland Technology Park proposes to be a center for high industrialized technology. Located near Oakland University and Oakland Community College, the approximate 1,800 acre site of the technology part area runs along Interstate 75, just north of M–59 in the cities of Rochester Hills and Auburn Hills. The total potential benefit measured in employment amounts to approximately 40,000 jobs in 1985. This figure does not include construction jobs over the ten year period. The estimate is the sum of 20,000 direct jobs at the site coming from a major developer on the proposed site, Chrysler Corporation. The Chrysler jobs are made up from 12,384 transfer jobs and 7,616 new jobs. The additional 20,000 other jobs, anticipated, formally announced or already in existence, are and will be in related technology, office, research and service industry investments coming from other private corporations and concerns. The technology park will stimulate significant on-site development as well as regional growth in the state and in the mid-west.

It is estimated that Federal funding for the project is expected to be from the United States Department of Housing and Urban Development (HUD), UDAG and Community Development Block Grant, as well as the Michigan Economic Development Agency, Small Cities Grants.

Need: A decision to prepare an EIS has been based upon effects on the number of jobs created, wetland areas, use of federal funds for infrastructure, roadway construction and job training.

Alternative: Alternative being considered include:

1. Accept the project as proposed;
1. Accept the project with conditions or modifications; and
3. No Action

Scoping: This notice is part of the process of Scoping the EIS. Responses will be used to: (1) Make a determination of the need to prepare a full EIS; (2) help determine significant environmental issues; (3) identify the data that will be used in the EIS; and (4) identify agencies, groups and individuals that will participate in the EIS process.

A public scoping meeting will be held as follows: Fifteen (15) days after publication in the **Federal Register** at 1:00–3:00 p.m. at Rochester Hills City Hall, 1000 Rochester Hills Drive, Rochester Hills, Michigan, Public Assembly Room and 7:00–9:00 p.m. at Auburn Hills City Hall, 1827 N. Squirrel Road, Auburn Hills, Michigan, Council Chambers.

Comments: Comments should be sent within fifteen days of publication of this Notice to: Read Ross, Office of Business and Community Development, Michigan Department of Commerce, Law Building, 5th Floor, P.O. Box 30225, Lansing, Michigan 48909, (517) 373–0347.

[FR Doc. 85–28630 Filed 12–2–85; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Cherokee Nation of Oklahoma; Transfer of Federally-Owned Lands

This notice is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.1. In the absence of the Assistant Secretary—Indian Affairs, 209 DM 8.3 A authorizes the Deputy Assistant Secretary—Indian Affairs final approval authority.

In July 12, 1983, pursuant to the authority contained in the Federal Property and Administrative Services Act of 1949, as amended by Pub. L. 93–599 dated January 2, 1975 (88 Stat. 1954), the below-described property was transferred by the Administrator of General Services to the Secretary of the Interior, without reimbursement, to be held in trust for the use and benefit of the Cherokee Nation of Oklahoma:

Indian Meridian

The West 1120 feet of the NW¼SE¼; S½SE¼, Section 19; that part of the SW¼SW¼SW¼ lying west of blacktop road, Section 20; N½NW¼NW¼, Section 29; NW¼NW¼NE¼; E½W½NE¼; E½NE¼; W½NE¼ SE¼; E½W½SE¼, NW¼SE¼S E¼; Section 30, all in Township 16 North, Range 22 East, containing 345 acres more or less.

These lands are to be treated as and receive the same benefits and protection as other trust lands held for the benefit and use of the Cherokee Nation of Oklahoma. Appropriate notation will be made in the land records of the Bureau of Indian Affairs.

Hazel E. Elbert,

Acting Deputy Assistant Secretary, Indian Affairs.

[FR Doc. 85–28628 Filed 12–2–85; 8:45 am]

BILLING CODE 4310–02–M

Bureau of Land Management

Notice of Environmental Assessment (EA) Availability

AGENCY: Bureau of Land Management, Interior.

ACTION: EA's preparation on proposed projects in Wilderness Study Areas.

SUMMARY: Two draft EA's have been prepared and are available for public comment. They are:

1. Granite Spring and Pipeline Reconstruction—Bull Mountain WSA (UT–050–242)

2. Capitol Reef Reservoir Maintenance—Designated WSA Status by National Park Service.

The draft EA's will be available at the Richfield District Office, 150 East 900 North, Richfield, Utah 84701. Comments will be accepted up to 30 days after printing of this notice in the **Federal Register**. For additional information, contact Roy Edmonds, Environmental Coordinator at the above address or call 801–896–8221.

November 22, 1985.

Donald L. Pendleton,

District Manager.

[FR Doc. 85–28670 Filed 12–2–85; 8:45 am]

BILLING CODE 4310–84–M

[W-83356]

Wyoming; Proposed Modification and Continuation of Stock Driveway Withdrawals

Correction

In the issue of Thursday, November 21, 1985, on page 48140, in the third column, a correction to FR Doc. 85-25823 appeared. In paragraph 1.b. the land description was inaccurate and should have appeared as follows:

Sec. 2, NE¼SW¼;

BILLING CODE 1505-01-M

Lewistown District Grazing Advisory Board; Meeting

AGENCY: Lewistown District Grazing Advisory Board, BLM, Interior.

ACTION: Notice of meeting.

SUMMARY: The Lewistown District Grazing Advisory Board will meet December 19, 1985. The agenda will be:

10:00 a.m.—Land Exchanges
11:00 a.m.—Off Road Vehicle Management
12:00 noon—Recess
1:00 p.m.—1986 Range Improvement Projects
2:00 p.m.—Carpenter Creek Allotment Management Plan
3:00 p.m.—Willow Creek Watershed Plan
4:30 p.m.—Adjournment

Public comment will be sought at the end of each agenda item.

DATE: December 19, 1985, 10:00 a.m. to 4:30 p.m.

ADDRESS: Yogo Inn, 211 East Main, Lewistown, Montana.

FOR FURTHER INFORMATION CONTACT: Glenn W. Freeman, District Manager, Bureau of Land Management, Airport Road, Lewistown, Montana 59457.

SUPPLEMENTAL INFORMATION: The Lewistown District Grazing Advisory Board is authorized under section 403 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1753). The board advises the Lewistown District Manager concerning the development of allotment management plans and the utilization of range betterment funds.

Dated: November 25, 1985.

Glenn W. Freeman,

District Manager.

[FR Doc. 85-28795, Filed 12-2-85; 8:45 am]

BILLING CODE 4310-DN-M

U.S. Geological Survey

Application Notice Establishing the Closing Date for Transmittal of Applications Under the National Earthquake Hazards Reduction Program for Fiscal Year (FY) 1987

Applications are invited for research projects under the National Earthquake Hazards Reduction Program.

Authority for this program is contained in the Earthquake Hazards Reduction Act of 1977, Pub. L. 95-124. (42 U.S.C. 7701, et seq.)

The purpose of this program is to support research in earthquake hazards and earthquake prediction to provide earth-science data and information essential to mitigate earthquake losses.

Applications may be submitted by educational institutions, private firms, private foundations, individuals, and agencies of State or local governments.

Closing Date for Transmittal of Applications: Applications for awards must be received on or before February 20, 1986.

Program Information: This program supports research related to the following general areas of national interest: (1) Current tectonic and earthquake potential studies—analysis of regional seismic network data, identification of source zone characteristics, and earthquake potential estimates; (2) earthquake prediction research—prediction methodology and evaluation, focused earthquake prediction experiments, and theoretical, laboratory, and fault zone studies; and (3) regional earthquake hazards assessments—mapping and aynthesis of geologic hazards and establishment of information systems, loss estimation modeling, and implementation.

Application Forms: The program announcement is expected to be available on or about December 10, 1985, and may be obtained by writing to the U.S. Geological Survey, Branch of Procurement and Contracts, MS 205C, 12201 Sunrise Valley Drive, Reston, VA 22092 and requesting a copy of announcement 7121. All organizations that applied for a FY 1986 award and all organizations that requested to be retained on the mailing list since the last announcement will be mailed a copy of the program announcement.

Further Information: For further information contact Dr. Elaine Padovani, Deputy Chief, External Research Program, Office of Earthquakes, Volcanoes, and Engineering, U.S. Geological Survey, 12201 Sunrise Valley Drive, Reston, VA 22092. Telephone 703-860-7875.

Dated: November 26, 1985.

Edmund J. Grant,

Assistant Director for Administration.

[FR Doc. 85-28734 Filed 12-2-85; 8:45 am]

BILLING CODE 4310-31-M

National Park Service

Intent To Prepare an Environmental Impact Statement Development Concept Plan for Decker Canyon, Santa Monica Mountains National Recreation Area

The National Park Service intends to prepare a combined development concept plan/environmental impact statement for a tract of land within the Santa Monica Mountains National Recreation Area known as the Decker Canyon Property. The Decker Canyon Property is a 160 acre tract located at the intersection of Decker and Mulholland Roads, which the National Park Service originally acquired through a bargain sale in 1983 for use in exchange for other desirable properties warranting fee acquisition within the national recreation area.

As a result of receiving an unsolicited proposal from Total Access, Inc., for development of this area to accomodate handicapped individuals in a wide range of activities, the National Park Service has determined that there may be desirable uses for this tract other than exchange, and intends to examine equally a reasonable range of alternative uses. Tentative alternatives to be analyzed in the combined development concept plan/environmental impact statement include the following.

—No action, whereby the tract will be retained and managed as natural area.
—Low level development, whereby limited day use will be allowed and connection with the recreation area's Back Bone Trail will be provided.
—High level development, whereby overnight and other facilities and trails specifically designed to accommodate but not limited to handicapped and other special populations will be provided as a concession operation.
—Exchange, whereby the tract would be used for trade for another parcel with potential development limited to a level compatible with the Mulholland scenic corridor.

This notice also serves to formally initiate the scoping process for the environmental impact statement. Other federal, state and local agencies,

organizations, and members of the general public are invited to submit comments relative to issues and alternatives to be analyzed in the environmental impact statement. Comments should be submitted to Daniel Kuehn, Superintendent, Santa Monica Mountains National Recreation Area, 22900 Ventura Boulevard, Suite 140, Woodland Hills, California 91364 within 30 days of publication of this notice. Comments received after that date will also be considered to the extent practicable.

Dated: October 10, 1985.

Howard H. Chapman,

Regional Director, Western Region, National Park Service.

[FR Doc. 85-28706 Filed 12-2-85; 8:45 am]

BILLING CODE 4310-70-M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before November 23, 1985. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by December 16, 1985.

Carol D. Shull,

Chief of Registration, National Register.

CALIFORNIA

San Diego County

Vista, *Braun, Charles A., House*, 790 Vale View Dr.

Santa Clara County

Los Altos Hills, *Lantarnam Hall*, 12355 Stonebrook Dr.

DELAWARE

New Castle County

Wilmington, *Braunstein's Building (Market Street MRA)*, 704-706 N. Market St.
Wilmington, *East Side Brandywine Historic District*, Roughly bounded by Sixteenth St., Brandywine Creek, Twelfth St., and US 13
Wilmington, *Main Office of the New Castle Leather Company*, Eleventh and Poplar Sts.
Wilmington, *Quaker Hill Historic District (Boundary Increase)*, Roughly bounded by Eighth St., Catawba & Washington Sts., Sixth & Seventh Sts., and Wollaston St.
Wilmington, *Wawaset Park Historic District*, Bounded by Greenhall, Pennsylvania and Woodlawn Aves., and Seventh St.

GEORGIA

Henry County

Hampton, vicinity, *Griffin, Smith, House*, Off Wynn Dr., NE of GA 20

INDIANA

Brown County

Axsom Branch Archaeological Site (12 Br 12)
Refuge #7 Archaeological Site (12 Br 11)

Grant County

Gas City, *West Ward School*, 210 W. North A St.

LaGrange County

Howe, *Lima Township School*, Market and Broad Sts.

Monroe County

Epsilon II Archaeological Site (12 MO 133)
Kappa V Archaeological Site (12 MO 301)

Posey County

Mt. Vernon, *Gonnerman, William, House*, 521 W. Second St.

KENTUCKY

Fulton County

Amburg Mounds Site (15 FU 15)

Meade County

Bradenburg, *Bradenburg Commercial District*, Main St.

Todd County

Hadden Site (15TO1)

MASSACHUSETTS

Middlesex County

Sherborn, *Assington (Sherborn MRA)*, 172 Forest St.
Sherborn, *Bullen—Stratton—Cozzen House (Sherborn MRA)*, 52 Brush Hill Rd.
Sherborn, *Clark—Northrup House (Sherborn MRA)*, 93 Maple St.
Sherborn, *Cleale, Joseph, House (Sherborn MRA)*, 147 Western Ave.
Sherborn, *Dowse, Rev. Edmund, House (Sherborn MRA)*, 25 Farm Rd.
Sherborn, *Edward's Plain—Dowse's Corner Historic District (Sherborn MRA)*, N. Main St. between Eliot and Evert Sts.
Sherborn, *Fleming, Thomas, House (Sherborn MRA)*, 18 Maple St.
Sherborn, *Goulding, Eleazer, House (Sherborn MRA)*, 137 Western Ave.
Sherborn, *Holbrook, Charles, House (Sherborn MRA)*, 137 Main St.
Sherborn, *Leland, Deacon William, House (Sherborn MRA)*, 27 Hollis St.
Sherborn, *Lewis, Charles D., House (Sherborn MRA)*, 81 Hunting Ln.
Sherborn, *Morse, Daniel, III, House (Sherborn MRA)*, 210 Farm Rd.
Sherborn, *Morse—Barber House (Sherborn MRA)*, 46 Forest St.
Sherborn, *Morse—Tay—Leland—Hawes House (Sherborn MRA)*, 266 Western Ave.
Sherborn, *Sanger, Asa, House (Sherborn MRA)*, 70 Washington St.
Sherborn, *Sanger, Richard III, House (Sherborn MRA)*, 60 Washington St.
Sherborn, *Sawin—Bullen—Bullard House (Sherborn MRA)*, 60 Brush Hill Rd.
Sherborn, *Sewall—Ware House (Sherborn MRA)*, 100 S. Main St.
Sherborn, *Sherborn Center Historic District (Sherborn MRA)*, Roughly bounded by Sawin, Washington, N. Main, S. Main, and Farm Sts.
Sherborn, *Sudbury Waste Weir A (Sherborn MRA)*, Kendall Ave., Collidge & Speen Sts.
Sherborn, *Twitchell, Joseph, House (Sherborn MRA)*, 32 Pleasant St.
Sherborn, *Vaughn, H.G., House (Sherborn MRA)*, 5 Sparhawk Rd.
Sherborn, *Ware's Tavern (Sherborn MRA)*, 113 S. Main St.
Sherborn, *Woodland Farm—Leland House (Sherborn MRA)*, 104 Woodland St.

NORTH CAROLINA

Caswell County

Frogsboro vicinity, *Griers Presbyterion Church and Cemetary*, SR 1710

Chatham County

Pittsboro vicinity, *Baldwin's Mill*, SR 1520

Guilford County

Greensboro, *Martin Harden Thomas House*, 204 N. Mendenhall St.
Greensboro, *West Market Street Methodist Episcopal Church-South*, 302 W. Market St.

Rowan County

Salisbury, *Mount Zion Baptist Church*, 413 N. Church St.

OREGON

Mulnomah County

Bonneville, *Bonneville Dam Historic District*, Columbia River between Bradford and Cascade Islands off I-80 in Multnomah County, Oregon to WA 14 in Skamania County, Washington (also in Skamania County, WASHINGTON)

PENNSYLVANIA

Bucks County

Newtown, *Newtown Historic District (Boundry Increase)*, E side Sycamore St. from Frost Ln. to Saint Andrew's Catholic Church and to adjoining rear properties facing State St.

TEXAS

Gray County

Pampa, *Schneider Hotel*, 120 S. Russell

UTAH

Cache County

Logan, *Logan Temple Barn*, 368 E. 200 North

Weber County

Ogden, *Browning Apartments*, 2703 Washington Blvd.

VIRGINIA

Lynchburg (Independent City)
Allied Arts Building, 725 Church St.

WASHINGTON

Skamania County

North Bonneville vicinity, *Bonneville Dam Historic District*, Columbia River between Bradford and Cascade Islands off I-80 in

Multnomah County, Oregon to WA 14 in Skamania County, Washington (also in Multonomah County, OREGON)

The 15-day commenting period for the following properties are to be waived in order to assist the buildings preservation through an easement donation in 1985.

COLORADO

Denver County

Denver, *Spratlen-Anderson Wholesale Grocery Company—Davis Brothers Warehouse*, 1450 Wynkoop St.

Pueblo County

Pueblo, *Woodcroft Sanatorium*, 1300 W. Abriendo Ave.

[FR Doc. 85-28604 Filed 12-2-85; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 30745]

Union Pacific Railroad Co.; Trackage Rights Exemption; Burlington Northern Railroad Co.

The Union Pacific Railroad Company (UP) has entered into an agreement for trackage rights over Burlington Northern Railroad Company (BN) trackage in the State of Washington as follows: (1) *On BN's 10th Subdivision*, bridge trackage rights between Blakeslee Junction (milepost 2.2) and Elma (milepost 48.7); and, (2) *On BN's 11th Subdivision*, bridge trackage rights between and including Elma (milepost 0.0) and Shelton (milepost 25.1), including trackage rights to serve Simpson Timber Company at Shelton; and trackage rights between McCleary Junction (milepost 7.5) and McCleary (0.7 mile east of McCleary Junction) to serve Simpson Timber Company.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

Dated: November 26, 1985.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 85-28679 Filed 12-2-85; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-16,180]

Bata Shoe Co., Elkins, WV; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on July 29, 1985 in response to a worker petition received on July 30, 1985, which was filed by three workers on behalf of workers at Bata Shoe Company, Incorporated, Elkins, West Virginia.

A certification for trade adjustment assistance was issued in an earlier petition (TA-W-13,782) on May 20, 1983 with an impact date of March 12, 1982 and an expiration date of May 20, 1985 covering all the workers at the Bata Shoe Company, Incorporated, Elkins, West Virginia plant. The Bata Shoe plant, Elkins, West Virginia closed on July 12, 1984 and no workers were employed after that date. Any workers applying for trade adjustment assistance under this petition (TA-W-16,180) are covered under the certification issued on May 20, 1983 for the earlier petition (TA-W-13,782). Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC, this 25th day of November 1985.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 85-28660 Filed 12-2-85; 8:45 am]

BILLING CODE 4510-30-M

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period November 18, 1985-November 22, 1985.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-16,169; Brett Harris Corporation, Hazleton, PA

Affirmative Determinations

TA-W-16,224; ITT Telecom Products Corp., Milan, TN

A certification was issued covering all workers of the firm separated on or after July 24, 1984.

TA-W-16,168; Amax Nickel, Inc., Braithewaite, LA

A certification was issued covering all workers of the firm separated on or after June 27, 1984.

TA-W-16,196; Outboard Marine Corp., OMC Galesburg Plant, Galesburg, IL

A certification was issued covering all workers of the firm separated on or after October 29, 1984 and before February 1, 1985.

TA-W-16,221; Ball Corporation, Electronic Systems Div., Blaine Plant, Circle Pines, MN

A certification was issued covering all workers of the firm separated on or after July 16, 1984.

TA-W-16,234; Milton Shoe Manufacturing, Inc., Milton, PA

A certification was issued covering all workers of the firm separated on or after October 1, 1984.

TA-W-16,234A; MSM Corp., Herndon, PA

A certification was issued covering all workers of the firm separated on or after October 1, 1984.

I hereby certify that the aforementioned determinations were issued during the period November 18, 1985–November 22, 1985. Copies of these determinations are available for inspection in Room 6434, U.S. Department of Labor, 601 D Street NW., Washington, DC during normal business hours or will be mailed to persons who write to the above address.

Dated: November 26, 1985.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

NEGATIVE DETERMINATION ISSUED NOVEMBER 18–22, 1985.—LABOR/SECY—WORKER ADJUSTMENT ASSISTANCE

Sheet No.

Date sent	Pub. date	45 FR	TA-W-No.	Description—Company and state	FR Document No.
			TA-W-16,169	Brett Harris Corporation, Hazleton, PA	
				Affirmative Determinations	
			TA-W-16,224	ITT Telecom Products Corp., Milan, TN	
			TA-W-16,168	Amax Nickel, Inc., Braithewaite, LA	
			TA-W-16,196	Outboard Maine Corp., OMC Galesburg, Plant, Galesburg, IL	
			TA-W-16,221	Ball Corporation Electronic Systems Div., Blaine Plant, Circle Pines, MN	
			TA-W-16,234	Milton Shoe Manufacturing, Inc., Milton, PA	
			TA-W-16,234A	MSM Corp., Herndon, PA	

[FR Doc. 85-28661 Filed 12-2-85; 8:45 am]

BILLING CODE 4510-30-M

Federal-State Unemployment Compensation Program; Certifications Under the Federal Unemployment Tax Act for 1985

On October 31, 1985, the Secretary of Labor signed the annual certifications under the Federal Unemployment Tax Act, 26 U.S.C. 3301 et seq., thereby enabling employers who make contributions to State unemployment funds to obtain certain credits for their liability for the Federal unemployment tax. By letter of the same date the certifications were transmitted to the Secretary of the Treasury. The letter and the certifications are printed below.

Dated: October 31, 1985.

Roberts T. Jones,

Acting Deputy Assistant Secretary of Labor.

October 31, 1985.

The Honorable James A. Baker III,
Secretary of the Treasury,
Washington, DC 20220.

Dear Jim: Transmitted herewith are an original and one copy of the certifications of the States and their unemployment compensation laws for the 12-month period ending October 31, 1985. One is required with respect to normal Federal unemployment tax credit by section 3304 of the Internal Revenue Code of 1954, and the other is required with respect to additional tax credit by Section 3303 of the Code.

The certification pursuant to section 3304 lists all 53 jurisdictions. The certification pursuant to Section 3303 omits Puerto Rico because the unemployment compensation law of this jurisdiction contains no experience rating provisions and permits no reduced rates of contributions.

Very truly yours,

William E. Brock.

UNITED STATES DEPARTMENT OF LABOR, OFFICE OF THE SECRETARY, WASHINGTON, DC

Certification of States to the Secretary of Treasury, Pursuant to Section 3304 of the Internal Revenue Code of 1954

In accordance with the provisions of section 3304(c) of the Internal Revenue Code of 1954 (26 U.S.C. 3304(c)), I hereby certify the following named States to the Secretary of the Treasury for the 12-month period ending on October 31, 1985, in regard to the unemployment compensation laws of those States which heretofore have been approved under the Federal Unemployment Tax Act:

Alabama
Alaska
Arizona
Arkansas
California
Colorado
Connecticut
Delaware
District of Columbia
Florida
Georgia
Hawaii
Idaho
Illinois
Indiana
Iowa
Kansas
Kentucky
Louisiana
Maine
Maryland
Massachusetts
Michigan
Minnesota
Mississippi
Missouri
Montana
Nebraska
Nevada
New Hampshire
New Jersey
New Mexico
New York
North Carolina
North Dakota
Ohio
Oklahoma
Oregon
Pennsylvania
Puerto Rico
Rhode Island
South Carolina
South Dakota
Tennessee
Texas
Utah
Vermont
Virginia
Virgin Islands
Washington
West Virginia
Wisconsin
Wyoming

This certification is for the maximum normal credit allowable under section 3302(a) of the Code.

Signed at Washington, DC, on October 31, 1984.

Bill Brock.

Secretary of Labor.

UNITED STATES DEPARTMENT OF LABOR, OFFICE OF THE SECRETARY, WASHINGTON, DC

Certification of State Unemployment Compensation Laws to the Secretary of the Treasury Pursuant to Section 3303 (b)(1) of the Internal Revenue Code of 1954

In accordance with the provisions of paragraph (1) of section 3303(b) of the Internal Revenue Code of 1954 (26 U.S.C. 3303(b)(1)), I hereby certify the unemployment compensation laws of the following named States, which heretofore have been certified pursuant to paragraph (3) of section 3303(b) of the Code, to the Secretary of the Treasury for the 12-month period ending on October 31, 1985.

Alabama
Alaska
Arizona
Arkansas
California
Colorado
Connecticut
Delaware
District of Columbia
Florida
Georgia
Hawaii
Idaho
Illinois
Indiana
Iowa
Kansas
Kentucky
Louisiana
Maine
Maryland
Massachusetts
Michigan
Minnesota
Mississippi
Missouri
Montana
Nebraska
Nevada
New Hampshire
New Jersey
New Mexico
New York
North Carolina
North Dakota
Ohio
Oklahoma
Oregon
Pennsylvania
Rhode Island
South Carolina
South Dakota
Tennessee
Texas
Utah
Vermont
Virginia
Virgin Islands
Washington
West Virginia
Wisconsin
Wyoming

This certification is for the maximum additional credit allowable under section 3302(b) of the Code.

Signed at Washington, DC, on October 31, 1985.

Bill Brock.

Secretary of Labor.

[FR Doc. 85-28664 Filed 12-2-85; 8:45 am]

BILLING CODE 4510-30-M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance; Atlantic Dress Manufacturing Co. et al.

Petitions have been filed with the Secretary of Labor under section 221 (a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 13, 1985.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 13, 1985.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213.

Signed at Washington, DC, this 25th day of November 1985.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
Atlantic Dress Manufacturing Co., Inc. (wkrs)	Williamstown, NJ	11/16/85	11/1/85	TA-W-16,650	Contractor sewing ladies skirts.
American Manufacturing Co., Inc. (workers)	Honesdale, PA	11/18/85	11/12/85	TA-W-16,651	Natural and synthetic fiber rope and twine.
B.R.W. Industries, Inc. (ACTWU)	Bangor, ME	11/18/85	11/8/85	TA-W-16,652	Automotive upholstery fabrics and fabric for apparel (die finish).
(The) E.W. Ferry Screw Products, Inc. (Independent Workers Assoc.).	Brookpark, OH	11/18/85	11/14/85	TA-W-16,653	Bolts and screws.
Ekco Housewares, Inc. (USWA)	Canton, OH	11/18/85	11/15/85	TA-W-16,654	Cutlery and other kitchen utensils.
Handy & Harman Electronic Material Corp. (IUTDM)	Montvale, NJ	10/31/85	10/21/85	TA-W-16,655	Electronic components.
J.L. Clark Manufacturing Co. (USWA)	Havre de Grace, MD	11/18/85	11/15/85	TA-W-16,656	Battery cylinders and decorative canisters.
Olin Corp., Ecusta Paper & Film Group (workers)	Pisgah Forest, NC	11/18/85	11/13/85	TA-W-16,657	Cellophane and re-inforced cellophane.
Pocono Foundry, Inc. (Molders Union)	Stroudsburg, PA	11/18/85	11/14/85	TA-W-16,658	Cast iron castings.
Rotelcom, Inc., Refurbishment Div. (Communications Wkrs of America).	Cortland, NY	11/18/85	11/13/85	TA-W-16,659	Repair and market telephones.
Trans/Circuits, Inc. (company)	Falls Church, VA	11/18/85	11/13/85	TA-W-16,660	Printed circuit boards.
A.C. Lawrence Leather Co., Inc. (workers)	So. Paris, ME	11/14/85	11/6/85	TA-W-16,661	Side leather for shoes.
Anderson Shake and Shingle (workers)	Cathlamet, WA	10/28/85	10/21/85	TA-W-16,662	Cedar shakes and shingles.
Cooper Tire and Rubber Co. (URW)	Texarkana, AR	11/15/85	11/11/85	TA-W-16,663	Passenger and truck tires (bias & radial).
Cosmos Footwear Corp. (workers)	Broadway, NY	11/12/85	11/6/85	TA-W-16,664	Ladies shoes and boots.
El Paso Machine & Steel Works, Inc. (workers)	El Paso, TX	11/13/85	11/8/85	TA-W-16,665	Steel fabrication.
Harrison Sportwear Co., Inc. (ILGWU)	Boston, MA	11/7/85	11/5/85	TA-W-16,666	Contractor of ladies skirts for Schwartz Sportswear.
Jackson Sportwear, Inc. (ILGWU)	Worcester, MA	11/7/85	11/5/85	TA-W-16,667	Ladies skirts for Schwartz Sportswear.
Jamie Togs, Inc. (ILGWU)	Broadway, NY	10/4/85	10/1/85	TA-W-16,668	Knitted toe shirts.
Pascoe Building Systems (Teamster)	Wathena, KS	11/13/85	11/6/85	TA-W-16,669	Steel-metal building-fabrication.
Santa Claus, Ind. (workers)	Waterloo, IA	11/18/85	11/6/85	TA-W-16,670	Buy ovenproof glassware and then decorate and repackage.
Schwartz Sportswear Co.	Boston, MA	11/7/85	11/5/85	TA-W-16,671	Women sportswear.
Elder Manufacturing Co. (ACTWU)	Dexter, MO	11/19/85	11/15/85	TA-W-16,672	Jeans—basic and dress, boys and girls.
General Tire & Rubber Co. (URW)	Waco, TX	11/15/85	11/12/85	TA-W-16,673	Bias-ply passenger, truck and farm tires.
Indiana General Div., Titan Corporation (workers)	Keasby, NJ	10/31/85	10/18/85	TA-W-16,674	Electronic components.
Kenwal Steel Co. (workers)	Twinsburg, OH	11/14/85	11/13/85	TA-W-16,675	Store and slit steel coils.
Mayfair of Massachusettts, Inc. (company)	Indiana Orchard, MA	11/12/85	11/5/85	TA-W-16,676	Girls and boys polo shirts.
Mayfair Mills, Inc. (Company)	New York, NY	11/12/85	11/5/85	TA-W-16,677	Girls and boys polo shirts—showroom.
Nike, Inc. (workers)	Saco, ME	11/14/85	11/8/85	TA-W-16,678	Sports footwear men and women.
Olsten Temporary Services (workers)	Akron, OH	11/13/85	11/12/85	TA-W-16,679	Temp. jobs service—light industrial and secretarial.
Orangeburg Garment Co. (ILGWU)	Orangeburg, SC	10/15/85	10/10/85	TA-W-16,680	Work uniforms.
Parker-Hannifin (Teamsters)	Saddlebrook, NJ	10/31/85	10/21/85	TA-W-16,681	Hydraulic and pneumatic cylinders.
TRW-Reda Pump Co. (IUOE)	Bartlesville, OK	11/15/85	11/11/85	TA-W-16,682	Motor heads, pump heads.
West Company (Amer. Flint Glass)	No. Bergen, NJ	11/14/85	11/4/85	TA-W-16,683	Pharmaceutical glassware.
Allegro Shoe Corp. (Boot & Shoe)	Little Falls, NY	11/18/85	11/12/85	TA-W-16,684	Womens shoes and boots.
Antmart (ILGWU)	Portage, PA	11/18/85	10/29/85	TA-W-16,685	Mfg dresses—ladies.
Elkem Metals Co. (OCAW)	Marietta, OH	10/30/85	10/25/85	TA-W-16,686	Electrolytic chromium, manganese, standard manganese, silica manganese.
Holly-Vent (ILGWU)	Gallitzin, PA	11/18/85	10/29/85	TA-W-16,687	Contractor ladies dresses.
Honeywell, Inc., Process Control Div. (IUE)	Ft. Washington, PA	11/18/85	11/14/85	TA-W-16,688	Many types of systems—instruments, controls (electronic devices).
Lafarge Calcium Aluminate, Inc. (workers)	Chesapeake, VA	11/19/85	11/14/85	TA-W-16,689	Calcium aluminate cement.
Markay Sportswear, Inc. (ILGWU)	Long Island City, NY	11/20/85	11/8/85	TA-W-16,690	Womens swimwear and sport togs.
Misty Manufacturing Co (ILGWU)	Baltimore, MD	11/15/85	10/30/85	TA-W-16,691	Rainwear mens and women.
N.A.E. Company (workers)	Lynn, MA	11/19/85	11/15/85	TA-W-16,692	Semi conductor electronic components.
Sea Gems Beachwear Inc. (ILGWU)	Long Island City, NY	11/15/85	11/8/85	TA-W-16,693	Women swimwear and sport togs.

[FR Doc. 85-28662 Filed 12-2-85; 8:45 am]

BILLING CODE 4510-30-M

Job Training Partnership Act; Migrant and Seasonal Farmworker Progams

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of intention to review the potential grantee selection procedures; request for comments.

SUMMARY: The Employment and Training Administration (ETA) is announcing its intention to review the selection procedures for selecting potential grantees for Job Training Partnership Act (JTPA) section 402 Migrant and Seasonal Farmworker programs. On May 27, 1983 and October 19, 1984, ETA published in the **Federal Register** Solicitations for Grant Awards (SGA) for programs for Migrant and Seasonal Farmworkers for Transition Year/Program Year 1984 and Program Years 1985–1986 respectively. Pursuant to those SGAs, potential grantees for JTPA section 402 programs were selected. Current grantees selected for Program Year 1985 will not have to compete for selection for PY 1986 if the responsibility conditions at 20 CFR 633.204 are met, an acceptable training plan is submitted, and funds are available.

DATE: Written comments on this Notice are invited from the public. Written comments must be received on or before February 3, 1986.

ADDRESS: Written comments should be submitted to: Paul A. Mayrand, Director, Office of Special Targeted Programs, ETA, U.S. Department of Labor, Room 6122, Patrick Henry Building, 601 D Street, NW., Washington DC 20213.

FOR FURTHER INFORMATION CONTACT: Charles C. Kane, Chief, Division of Seasonal Farmworker Programs. Telephone: (202) 376–1226.

SUPPLEMENTARY INFORMATION: Section 402(c)(1) of the JTPA requires the Secretary to use procedures consistent with standard competitive Government procurement policies when awarding JTPA section 402 grants. Section 402(d) of the JTPA requires the Secretary to consult with State and local officials in administering JTPA section 3402 programs. This requirement is generally met through compliance with Executive Order 12372, Intergovernmental Review of Federal Programs.

The next cycle for JTPA section 402 selections will cover JTPA Program Years 1987 and 1988 (July 1, 1987 through June 30, 1989). Following the selections of JTPA section 402 grantees for Program Years 1985 and 1986 funding cycles, ETA received some complaints which indicated that the Governors should be more involved in the decisionmaking process and that local organizations should receive some form of preference in the selection of JTPA section 402 grantees for their States. To insure that all valid interests in the JTPA Section 402 selection process are considered, ETA proposes to consider the options listed below in its review of the selection procedures. After its review of comments received pursuant to this Interim Notice, ETA will publish a Final Notice announcing what changes, if any, will be pursued.

Option I

Assign five (5) extra rating points to the application recommended by the Governor for the JTPA section 402 program for his or her State.

Option II

Restructure the rating factors along the lines of the review standards at 20 CFR 633.203 and redistribute the rating points to allow more points for "familiarity with the area to be served" and "linkages and coordination." The proposed rating criteria are as follows:

A. An understanding of the problems of migrants and seasonal farmworkers. (Range 0 to 20 points)

B. A familiarity with the area to be served. (Range 0 to 30 points)

C. A previously demonstrated capability to administer effectively a diversified employability development program for migrant and seasonal farmworkers. (Range 0 to 25 points)

D. General administrative and financial management capability. (Range 0 to 25 points)

E. Prior performance with respect to financial management, audit, and program outcomes (covered under the Responsibility Review or preaward survey).

Option III

Strengthen the implementation of Executive Order 12372. Specify in each future SGA the timeframe for (1) comments from the State, Single Point of Contact or others, (2) responses from the applicant regarding those comments, and (3) the Department's actions regarding the comments and response.

Option IV

Give additional rating points to in-State applicants.

Option V

Limit area of competition to in-State applicants.

Option VI

Give preference to in-State applicants if they pass the Responsibility Review (current grantees) and if they obtain a minimum passing score in the competition.

Option VII

Award additional rating points in the competition for an applicant's proposed leveraging or matching with non-Federal funds.

Signed at Washington, DC, this 26th day of November 1985.

Paul A. Mayrand,

Director, Office of Special Targeted Programs.

[FR Doc. 85–28663 Filed 12–2–85; 8:45 am]

BILLING CODE 4510–30–M

Mine Safety and Health Administration

[Docket No. M–85–171–C]

Beatrice Pocahontas Co.; Petition for Modification of Application of Mandatory Safety Standard

Beatrice Pocahontas Company, P.O. 11430, Lexington, Kentucky 40575 has filed a petition to modify the application of 30 CFR 75–1700 (oil and gas wells) to its Beatrice mine (I.D. No. 44–00238) located in Buchanan County, Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that barriers be established and maintained around oil and gas wells penetrating coal beds.

2. As an alternate method, petitioner proposes to mine through a plugged and abandoned gas well which penetrates the Pochontas No. 3 Seam and 2nd Development, 6th South in the mine.

3. In support of this request, petitioner states that the well was plugged and abandoned more than twenty-seven years ago. The well was dry at the time it was plugged and abandoned. The surface elevation at the gas well is 1472.9 feet, and was drilled to a depth of 4802 feet. The bottom seam elevation of the Pocahontas No. 3 Seam is approximately 20 feet with a seam height of approximately 54 inches. The Commonwealth of Virginia has given permission for the mining through the well in question.

4. Petitioner states that since the well has been plugged, mining through the area in question while following the existing mine plan and regulations is an alternative method of achieving the

result of the standard that will at all times guarantee no less than the same measure of protection afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before January 2, 1986. Copies of the petition are available for inspection at that address.

Dated: November 25, 1985.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85-28651 Filed 12-2-85; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-136-C]

Consol Pennsylvania Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Consol Pennsylvania Coal Company, 1800 Washington Road, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.1002 (location of trolley wires, trolley feeders wires, high-voltage cables and transformers) to its Bailey Mine (I.D. No. 36-07230) located in Greene County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that trolley wires and trolley feeder wires, high-voltage cables and transformers not be located inby the last open crosscut and be kept at least 150 feet from pillar workings.

2. Petitioner states that the longwall mining systems will be 750 feet wide and have a total of 1,850 connected horsepower at the face. In order to supply power to such a mining system from a power system limited to 1,000 volts, the following problems arise:

(a) There is a very small safety factor to account for normal in-mine wear of the circuit breaker;

(b) The ampacity requirements at 1,000 volts are such that very large and heavy cables must be used. Accident information indicates that a large number of electrical-related injuries are strains and sprains incurred during heavy cable handling; and

(c) The poor voltage regulation associated with high horsepower 1,000 volts face conveyor system causes overheating problems with the fluid couplers, which could expose miners to burns from hot transmission fluid.

3. As an alternate method, petitioner proposes to use high-voltage (4,160 volts) cables to supply power to permissible longwall face equipment in or inby the last open crosscut, with specific equipment and conditions as outlined in the petition.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before January 2, 1986. Copies of the petition are available for inspection at that address.

Dated: November 26, 1985.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85-28652 Filed 12-2-85; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-141-C]

Consolidation Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Consolidation Coal Company, Consol Plaza, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its Jenkinjones No. 4 Mine (I.D. No. 46-04533) located in McDowell County, West Virginia. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that return air courses be examined in their entirety on a weekly basis.

2. The conditions in the return air course in Laurel Mains have deteriorated, resulting in adverse roof conditions which have made these return air courses hazardous to travel and examine. Rehabilitation of the affected area would expose miners to hazardous working conditions.

3. As an alternate method, petitioner proposes to establish one check point in the Laurel Mains where certified persons will take air and gas measurements when making weekly examinations of the affected return air course. The results of these measurements will be recorded as required by the standard.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before January 2, 1986. Copies of the petition are available for inspection at that address.

Dated: November 26, 1985.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85-28653 Filed 12-2-85; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-176-C]

Consolidation Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Consolidation Coal Company, Consol Plaza, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.1700 (oil and gas wells) to its Dilworth Mine (I.D. No. 36-04281) located in Greene County, Pennsylvania. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that barriers be established and maintained around oil and gas wells penetrating coal beds or any underground area of a coal mine.

2. The oil and gas wells in the Dilworth Mine were drilled between 1890 and 1955 when no standards for drilling and plugging existed, and many wells were abandoned.

3. As an alternate method, petitioners proposes to seal the Pittsburgh Coal Seam from the surrounding strat at the affected wells using a technique specified in the petition developed by the U.S. Bureau of Mines and the Energy

Research and Development Administration, as follows:

a. Boreholes would be cleaned to the original depth or far enough to allow 200 feet of expanding cement below the base of the lowest mineable coalbed. Borehole casing would be removed where possible or if casing remains it would be treated with expanding cement slurry.

b. If the cleaned-out borehole producers gas, a mechanical bridge plug or a substantial brush plug would be set in the borehole. Plugs would also be used to isolate any hydrocarbon producing stratum within 200 feet of the base.

c. The wellbore would be completely filled with a gel to inhibit gas flow, support borehole walls, and densify the expanding cement.

d. To plug oil or gas wells to the surface, at least 200 feet of expanding cement would be below the base of the lowest mineable coalbed, filling the borehole to the surface. A permanent magnetic monument would mark the borehole.

e. To plug oil or gas wells using the vent pipe methods, a 4½ inch vent pipe would be run into the wellbore 100 feet below the lowest mineable coalbed. A cement plug would be set in the wellbore for a minimum of 200 feet below the coalbed base and 100 feet above the top of the coalbed. Fluid would be evacuated and the top of the vent pipe would be covered.

f. When plugging oil or gas wells for subsequent use as degasification boreholes, a cement plug would be set in the wellbore 200 feet below the lowest mineable coalbed with the top extending above the top of the coalbed, the distance dependent on the average roof strata breaking height. Degasification casing would be used for methane drainage and would be fitted with an equipped wellhead.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before January 2, 1986. Copies of the petition are available for inspection at that address.

Dated: November 25, 1985.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85-28654 Filed 12-2-85; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-164-C]

Garden Creek Pocahontas Co.; Petition for Modification of Application of Mandatory Safety Standard

Garden Creek Pocahontas Company, P.O. Box 11430, Lexington, Kentucky 40575 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its VP-6 Mine (I.D. No. 44-04517) located in Buchanan County, Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that weekly examinations for hazardous conditions be made in the return of each split of air where it enters the main return, in the main return, and in at least one entry of each intake and return air course in its entirety.

2. Petitioner states that the roof has deteriorated, exposing persons making the examinations to unnecessary hazards.

3. As an alternate method, petitioner proposes to have a certified person make the weekly examinations at the tail of the longwall unit and at the mouth of the longwall tail entries at Spad No. 1323 in lieu of the area where the roof has deteriorated.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before January 2, 1986. Copies of the petition are available for inspection at that address.

Dated: November 25, 1985.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85-28655 Filed 12-2-85; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-135-C]

Gateway Coal Co.; Petition for Modification of Application of Mandatory Safety Standards

Gateway Coal Company, 1200 First Security Plaza, Lexington, Kentucky 40507 has filed a petition to modify the application of 30 CFR 75.503 (permissible electric face equipment; maintenance) to its Gateway Mine (I.D. No. 36-00906) located in Greene County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the use of a locked padlock to secure battery plugs to machine-mounted battery receptacles on permissible, mobile, battery-powered machines.

2. As an alternate method, petitioner proposes to use a metal retainer device which would be bolted to the battery receptacle. The plug would be secured by a hand-operated, spring-loaded pin which would be attached to the retainer device, in lieu of padlocks to secure battery plugs to machine-mounted battery receptacles on permissible, mobile, battery-powered machines.

3. Petitioner states that the metal retainer will be easier to maintain than padlocks because there are no keys to be lost and it will stay in place and be more accessible.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before January 2, 1986. Copies of the petition are available for inspection at that address.

Dated: November 26, 1985.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85-28656 Filed 12-2-85; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-169-C]

Trail Mountain Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Trail Mountain Coal Company, P.O. Box 370, Orangeville, Utah 84537-0370 has filed a petition to modify the application of 30 CFR 75.1100-2(b) (quantity and location of fire fighting equipment) to its Trail Mountain Mine (I.D. No. 42-01211) located in Emery County, Utah. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that waterlines be installed parallel to the entire length of belt conveyors and be equipped with firehose outlets with valves at 300-foot intervals along each belt conveyor and at tailpieces.

2. Petitioner states that due to the severity of winter conditions at the mine's 7200-foot elevation, the pipe freezes back to the belt air regulator, which causes the fire valves to be inoperable.

3. As an alternate method, petitioner proposes to install a two-inch solenoid valve and a remote control switch at the portal of the belt entry, with a low pressure bleed off that would allow the water to drain. If a fire or another occurrence would require water, the remote switch could be thrown and the water supply line would then be supplied with the water required, making the fire valve outlets operable.

4. For these reasons petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before January 2, 1986. Copies of the petition are available for inspection at that address.

Dated: November 25, 1985.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85-28657 Filed 12-2-85; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-82-21-M]

Union Oil Co. of California; Petition for Modification of Application of Mandatory Safety Standard

Union Oil Company of California, 2717 Country Road 215, P.O. Box 76, Parachute, Colorado 81635 has filed an amendment to a petition for modification. On May 4, 1982, Union Oil Company of California submitted a petition to modify the application of 30 CFR 57.17-10 (illumination) to its Parachute Creek Mine (I.D. No. 05-03143) located in Garfield County, Colorado. On June 4, 1982, MSHA published notice of the petition in the **Federal Register** (47 FR 24485), allowing interested parties 30 days to submit comments. On October 14, 1982, MSHA granted the petition for specified areas of the mine. On November 1, 1985, the petitioner submitted a request to amend the original petition for modification to extend the proposed alternate method of compliance.

1. The petition concerns the requirement that individual electric lamps carried for illumination by all persons underground.

2. On October 14, 1982, MSHA granted the petition allowing miners to enter into an underground office building and change room complex without carrying an individual electric lamp. The petitioner wants to extend the provisions to include a modular training building adjacent to the underground office and change room complex.

3. The training building is situated in the same drift that the office and change room complex is located in and is within 34 feet of a door providing ingress and egress into the office and change room complex. The building is equipped with telephones and the audible emergency alarms can be clearly heard when in the building.

4. Permanent area lighting between the office complex and the training building is in place. Light meter readings on the walkway between the office complex and training building are 20 to 40 foot candles. The training building is equipped with emergency lights that turn on automatically during a power outage. The open area between the office complex and the training building has emergency lights that also turn on during a power outage to light the walkway between the two buildings.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before January 2, 1986. Copies of the petition are available for inspection at that address.

Dated: November 26, 1985.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85-28658 Filed 12-2-85; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-157-C]

Wolf Creek Collieries Co.; Petition for Modification of Application of Mandatory Safety Standard

Wolf Creek Collieries Company, Caller No. 802, Lovely, Kentucky 41231 has filed a petition to modify the application of 30 CFR 75.900 (low- and medium-voltage circuits serving three-phase alternating current equipment; circuit breakers) to its No. 4 Mine (I.D. No. 15-04020) located in Martin County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that low- and medium-voltage power circuits serving three-phase alternating current equipment be protected by suitable circuit breakers of adequate interrupting capacity which are properly tested and maintained and that such breakers be equipped with devices to provide protection against undervoltage, grounded phase, short circuit, and overcurrent.

2. As an alternate method, petitioner proposes to use contractors to obtain undervoltage protection in lieu of a circuit breaker. Belt power contactors would be built into or permanently affixed to the transformer enclosure and properly separated and isolated from the other components of air. Examinations would be made by a qualified person and the records would be available for inspection.

3. All affected personnel would be trained in the circuit plans used at these locations.

4. Undervoltage release would be obtained by the electrical nature of

contactors and relays which drop out of 40 to 50 percent of the rated coil voltage.

5. Prior to each start-up, an audible alarm would be sounded for thirty seconds that can be heard the full length of the conveyor. All start-up horns would operate on 24 volts D.C. and all remote control voltage would be 24 volts D.C.

6. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before January 2, 1986. Copies of the petition are available for inspection at that address.

Dated: November 26, 1985.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85-28659 Filed 12-2-85; 8:45 am]

BILLING CODE 4510-43-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 30-06219; License No. 37-09928-01 EA 85-86]

Astrotech, Inc.; Harrisburg, PA; Order Imposing a Civil Monetary Penalty

I

Astrotech, Incorporated, Harrisburg, Pennsylvania, (the "license") is the holder of License No. 37-09928-01 (the "licensee") issued by the Nuclear Regulatory Commission (the "Commission" or "NRC") which authorizes the licensee to perform industrial radiography at its Harrisburg facility and at temporary job sites. The license was last issued on January 26, 1982 and will expire on January 31, 1987.

II

An NRC safety inspection of the licensee's activities under the license was conducted on June 20, 25 and July 2, 1985. During the inspection, twelve violations of NRC requirements were identified. A written Notice of Violation and Proposed Imposition of Civil Penalty was served upon the licensee by letter dated August 20, 1985. The Notice states the nature of the violations, the provisions of the NRC's requirements that the licensee had violated, and the amount of the proposed civil penalty for the violations. Two letters in response, dated September 10 and 16, 1985, to the Notice of Violation and Proposed Imposition of Civil Penalty were received from the licensee.

III

Upon consideration of the answers received, and the statements of fact, explanation, and arguments for remission or mitigation of the proposed civil penalty contained therein, the Director, Office of Inspection and Enforcement, has determined, as set forth in the Appendix to this Order, that the penalty proposed for the violations designated in the Notice of Violation and Proposed Imposition of Civil Penalty should be imposed, but the licensee should be allowed to pay the imposed penalty in twelve monthly installments, as requested in their September 10, 1985 letter.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2282, Pub. L. 96-295, and 10 CFR 2.205, it is hereby ordered that the licensee pay a civil penalty:

a. in the full amount of Five Thousand Dollars ($5,000) within thirty days of the date of this Order by check, draft, or money order, payable to the Treasurer of the United States and mailed to the Director, Office of Inspection and Enforcement, USNRC, Washington, DC 20555; or

b. in monthly installments, with interest accruing from January 1, 1986 at the rate of 8 percent per year, as described in the schedule of monthly installments provided with the enclosed "Promissory Note in Repayment of Pre-existing Debt," which the licensee must provide with the first payment to the Director, Division of Accounting and Finance, Office of Resource Management, NRC within thirty days of the date of this Order.

V

The licensee may, within thirty days of the date of this Order, request a hearing. A request for a hearing shall be addressed to the Director, Office of Inspection and Enforcement. A copy of the hearing request shall also be sent to the Executive Legal Director, USNRC, Washington, D.C. 20555, and to the Regional Director, Region I, at 631 Park Avenue, King of Prussia, Pennsylvania 19406. If a hearing is requested, the Commission will issue an Order designating the time and place of hearing. Upon failure of the licensee to request a hearing withing thirty days of the date of this Order, the provisions of this Order shall become effective without further proceedings and, if payment has not been made in accordance withe section IV.a or IV.b of this Order by that time, the matter may be referred to the Attorney General for collection. In the event the licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the licensee violated NRC requirements as set forth in the Notice of Violation and Proposed Imposition of Civil Penalty, and

(b) Whether, on the basis of such violations, this Order should be sustained.

Dated at Bethesda, Maryland, this 26th day of November, 1985.

For the Nuclear Regulatory Commission.

James M. Taylor,

Director, Office of Inspection and Enforcement.

Appendix

Evaluations and Conclusions

In the licensee's two responses dated September 10 and 16, 1985 to the Notice of Violation and Proposed Imposition of Civil Penalty dated August 20, 1985, the licensee admits the twelve violations and provides a description of its corrective actions, but claims that imposition of the civil penalty in the amount of $5,000 will impose a severe financial burden on the licensee. The licensee requests reduction of the amount of the civil penalty and also requests that payment of the amount of any civil penalty imposed be made in twelve monthly installments. Provided below are (1) a restatement of each violation, (2) a summary of the licensee's response, and (3) the NRC evaluation of the licensee's response.

Restatement of Violations

A. 10 CFR 34.31(a) requires that no individual act as a radiographer until that individual can demonstrate his understanding of the instructions which he has received regarding the subjects covered in Appendix A of Part 34 and has successfully completed a written test on the subject covered.

Contrary to the above, one individual was permitted to act as a radiographer prior to demonstrating his understanding of the subjects outlined in Appendix A, and without successfully completing a written test on the subjects covered. Specifically, an individual was administered a written examination on November 4, 1983 which he did not successfully complete and that

individual was permitted to act as a radiographer on November 9, 13, and 14, 1984 and July 1, 1985.

B. 10 CFR 34.31(b) requires that no individual act as a radiographer's assistant until that individual has received copies of, and instruction in, the licensee's operating and emergency procedures and has demonstrated understanding of the instructions by successfully completing a written or oral test.

Condition 16 of License No. 37–09928–01 requires that licensed material be possessed and used in accordance with statements, representations, and procedures contained in the application dated December 23, 1981. This application requires that prior to acting as a radiographer's assistant, an employee will receive 30 hours of formal instruction in the subjects specified in the application and successfully complete a written test on the subjects covered.

Contrary to the above, on at least two occasions, one individual was permitted to act as a radiographer's assistant after April 22, 1985 prior to receiving instruction in the licensee's operating and emergency procedures, prior to receiving 30 hours of formal instruction in the subjects specified in the application dated December 23, 1981, and prior to demonstrating his understanding of the instructions by successfully completing a written test.

C. 10 CFR 34.23 requires that locked radiographic exposure devices and storage containers be physically secured to prevent tampering or removal by unauthorized personnel.

Contrary to the above, on June 20, 1985, radiographic exposure devices stored in the radiography cell were not physically secured to prevent tampering or removal by unauthorized personnel.

D. 10 CFR 20.203(b) requires that each radiation area as defined in 10 CFR 20.202(b)(2) be conspicuously posted with a sign or signs bearing the radiation caution symbol and the words: "Caution Radiation Area."

Contrary to the above, on June 20, 1985, a radiation area existed on the roof of the facility, and the radiation area was not posted with a sign bearing the radiation caution symbol and the words "Caution Radiation Area."

E. 10 CFR 20.203(c) requires that each high radiation area as defined in 10 CFR 20.202(b)(3) be conspicuously posted with a sign or signs bearing the radiation caution symbol and the words: "Caution High Radiation Area."

Contrary to the above, on June 25, 1985, a high radiation area existed in the storage area above the radiography cell, and the high radiation area was not posted with a sign bearing the radiation caution symbol and the words "Caution High Radiation Area."

F. 10 CFR 34.26 requires that a quarterly inventory be conducted to account for all sealed sources, and records be maintained of the inventories that include the quantities and kinds of by-product material, location of sealed sources, and the date of the inventory.

Contrary to the above, an adequate quarterly inventory was not conducted for the second calendar quarter of 1985. Specifically, the records of the quarterly inventory made on April 27, 1985 did not account for a cobalt-60 source and did not indicate that the iridium-192 source was stored in Bordentown, New Jersey.

G. 10 CFR 34.33(c) requires that pocket dosimeters be checked for correct response to radiation at intervals not to exceed one year.

Contrary to the above, a pocket dosimeter used by personnel from October 29, 1984 to June 25, 1985 had not been checked for correct response to radiation from February 10, 1983 to June 25, 1985, an interval of more than one year.

H. 10 CFR 71.5(a) requires, in part, that no licensee transport any licensed material outside the confines of his plant or other place of use, or deliver any licensed material to a carrier for transport, unless the licensee complies with applicable requirements of the regulations appropriate to the mode of transport of the Department of Transportation (DOT) in 49 CFR Parts 170–190.

49 CFR 173.416 specifies, in part, the types of packages authorized for shipment of radioactive material in quantities exceeding the activity of special form radioactive material as listed in 49 CFR 173.435.

49 CFR 173.435 establishes this value to be 20 curies for iridium-192 in special form.

Contrary to the above, on July 1, 1985, the licensee shipped 68 curies of iridium-192 in special form in a package not authorized by 49 CFR 173.416 because it lacked a required overpack (a condition of use for the NRC-approved package as described in NRC Certificate of Compliance No. 6717B).

I. Condition 10 of License No. 37–0992801 restricts the places of use of licensed material to the licensee's facilities at 7801 Allentown Boulevard, Harrisburg, Pennsylvania and at temporary job sites in the United States where the NRC maintains jurisdiction for regulating the use of licensed material.

Contrary to the above, as of July 2, 1985, an iridium-192 sealed source has been stored at the Certified Testing Laboratories, Inc., facility in Bordentown, New Jersey, and this location was not a temporary job site.

J. Condition 16 of License No. 37–09928–01 requires that licensed material be possessed and used in accordance with statements, representations, and procedures contained in application dated October 26, 1981.

Attachment P of this application requires that the Radiation Safety Officer perform a field site audit of radiographic operations approximately once a week.

Contrary to the above, between November 1, 1984 and December 18, 1984, weekly field site audits were not performed.

K. 10 CFR 34.29(c) requires that the alarm system on the permanent radiographic installation be tested at intervals not to exceed three months, and records of these tests be maintained for two years.

Contrary to the above, as of June 25, 1985, records were not maintained of the tests performed on the alarm system of the permanent radiographic installation.

L. 10 CFR 20.401(b) requires that each licensee maintain records showing the results of monitoring of packages required by 10 CFR 20.205(b) and (c).

Contrary to the above, records were not maintained of the monitoring performed of incoming packages that were required to be monitored in accordance with 10 CFR 20.205(b) and (c), since the packages contained more than three curies of iridium-192.

Collectively, these violations have been categories as a Severeity Level III problem (Supplements IV, V and VI).

Cumulative Civil Penalty—$5,000 assessed equally among the violations.

Summary of License Response

The licensee does not dispute any of the violations cited in the Notice of Violation and Proposed Imposition of Civil Penalty but requests (1) a reduction of the civl penalty amount claiming that the proposed amount will impose a severe financial burden upon the licensee, and (2) that the amount of any civil penalty imposed be payable in twelve monthly installments. In support of its request, the licensee has provided a copy of its financial statements for 1982, 1983, and 1984.

NRC Evaluation of Licensee Response

Although the NRC Enforcement Policy recognizes that a licensee's ability to pay is a proper consideration in determining the amount of a civil penalty, the licensee's financial information submitted in its September 10, 1985 letter does not demonstrate that

imposition of the civil penalty would create a severe financial burden. Specifically, certain information, for example with regard to retained earnings and management fees, seems to indicate that you can accommodate the payment of this civil penalty without severe financial impact. Therefore, the NRC finds, consistent with its Enforcement Policy, that the impositon of the civil penalty will not result in economic termination of the licensee's business or financial hindrance of the licensee's ability to safely conduct licensed activities.

NRC Conclusion

The licensee has not provided an adequate basis for reduction of the civil penalty amount, and full payment of the proposed civil penalty should not place a severe financial burden on the licensee. Accordingly, the NRC is imposing a civl penalty in the amount of $5,000. Payment of the imposed civil penalty in twelve installments at the required interest rate is considered acceptable.

Promissory Note in Repayment of Preexisting Debt

1. Obligation. For value received, Astrotech, Incorporated (hereafter referred to as the Maker) promises to pay to the order of the U.S. Nuclear Regulatory Commission the principal sum of $5,000 dollars, with interest accruing from January 1, 1986, at the rate of 8 percent per year. This note is being given for the purpose of refinancing and paying off an amount which constitutes the sum of the principal due and all unpaid interest and other charges owed to the United States on the civil penalty debt which has been assigned the control number captioned above. The Maker hereby acknowledges and admits the validity and amount of that preexisting debt, which the principal sum stated in this note is intended to repay. The Maker further acknowledges that execution of this note constitutes a waiver of the right to contest the amount of the civil penalty and the underlying violations on which it is based under section 234c of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2272c.

2. Installments. This note is to be paid in twelve monthly principal installments of not less than $416.67 each, plus interest on the unpaid principal balance, payable at the Nuclear Regulatory Commission, Washington, DC, on or before the 1st day of the month, beginning on January 1, 1986, and continuing until either the principal sum and all interest and other charges assessed under the provisions of this note have been fully paid, or this note is considered to be in default under the provisions of paragraph 6 of this note. Payments will be mailed to the following address: U.S. Nuclear Regulatory Commission, Division of accounting and Finance, Mail Stop MNBB 11104, Washington, DC 20555.

Following is a schedule of monthly installments exclusive of administrative charges and late-payment penalties:

Due date	Principal	Interest	Total installment
01/01/86	416.67	0	416.67
02/01/86	416.67	30.55	447.22
03/01/86	416.67	27.78	444.45
04/01/86	416.67	24.99	441.66
05/01/86	416.67	22.22	438.89
06/01/86	416.67	19.44	436.11
07/01/86	416.67	16.66	433.33
08/01/86	416.67	13.88	430.55
09/01/86	416.67	11.10	427.77
10/01/86	416.67	8.32	424.98
11/01/86	416.67	5.55	422.21
12/01/86	416.67	2.77	419.43

3. Administrative Charges. Administrative charges to cover the costs incurred by the United States in handling and processing past-due amounts will be assessed at the rate of $12.00 for each payment more than thirty (30) days past due; an additional $15.00 for each payment more than sixty (60) days past due; and an additional $18.00 for each payment more than ninety (90) days past due.

4. Late Payment Penalties. Late payment penalties will be assessed on any amount more than ninety (90) days past due, at the rate of six (6) percent per year.

5. Payment Crediting. The payments that the Maker makes under this note will be credited as of the date received by the U.S. Nuclear Regulatory Commission first to outstanding penalties and administrative charges; second to accrued interest; and third to the outstanding principal sum. Any payments that the Maker made to the United States on this debt during the period from the date from which interest accrues under this note (as specified in paragraph 1) until the effective date of this note (as specified in paragraph 11) shall be applied to the principal sum, interest, and other charges accruing under this note in accordance with the provisions of this paragraph.

6. Default, Acceleration, and Other Remedies. If any installment shall remain unpaid for a period of thirty (30) days or more, this note shall, at the option of the United States, be considered to be in default. In the event of default, the full amount of the principal sum, together with any accrued interest and other charges assessed under this note, less any payments actually received by the United States from the Maker, shall be due and payable in full immediately, without the need for further demands or notices to the Maker. Furthermore, in that event, the Maker agrees that the United States may exercise any collection options legally available to it, including, but not limited to, taking administrative offset, hiring a private debt collection agency, filing adverse credit reports to local and national credit bureaus, referring the Maker's account for legal action, and suspending or revoking any license or other privilege which the U.S. Nuclear Regulatory Commission has granted to the Maker.

7. Default Costs and Fees. In the event of default, the Maker agrees to pay all reasonable collection costs, court costs, and attorneys' fees incurred by the United States as a result of the default and any appropriate collection actions taken by the United States.

8. Confess Judgment Provision. The Maker, if permited by Controlling Law (as specified in paragraph 9), does hereby authorize and empower a United States Attorney, any of his assistants, or any attorney of any court of record, State or federal, to appear for the Maker and to enter and confess judgment against the Maker for the entire amount of this obligation, with interest, less payments actually made, at any time after the same becomes due and payable, as herein provided, in any court of record, Federal or State; to waive the issuance and service of process upon the Maker in any suit on the obligation; to waive any venue requirement in such suit; to release all errors which may intervene in entering upon such judgment or in issuing any execution thereon; and to consent to immediate execution on said judgment. The Maker does hereby ratify and confirm all that said attorney may do by virtue hereof.

9. Controlling Law. Except where controlled by Federal law, all disputes concerning this note shall be controlled by the law of the jurisdiction in which the Maker is incorporated at the time this note is signed.

10. Changes. The provisions of this note may not be changed except by a written agreement which specifies the agreed-upon changes and which is signed by the Maker and an authorized representative of the United States.

11. Legal Effect. This note shall not be effective or legally binding upon the Maker or the United States until the date it is signed by an authorized official of the Maker.

12. Signatures and Certification. I, as an official of the Maker, do hereby

certify that I have read and understood the terms of this note.

Signed: This 1st day of January 1986.

Signature

Printed Name

Address

I am an authorizing official of the Maker and do certify that the Maker is incorporated in the State of ——— at the time this note is signed and that the signature above is that of an individual authorized to enter into a promissory note for the Maker.

Signed:

Signature

Printed Name

Address

[FR Doc. 85-28727 Filed 12-2-85; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 50-219]

GPU Nuclear Corporation and Jersey Central Power and Light Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of Appendix R to 10 CFR Part 50 to GPU Nuclear Corporation, et al. (the licensee), for the Oyster Creek Nuclear Generating Station, located in Ocean County, New Jersey.

Environmental Assessment

Identification of Proposed Action: The Exemption would grant relief in eight-fire areas to the extent that redundant safe shutdown related cable and equipment are not separated and/or protected in accordance with Section III.G.2 of Appendix R. The eight fire areas are as follows: Reactor Building Fire Areas RB-FZ-1D, RB-FZ-1E and RB-FZ-1F; Turbine Building Lube Oil Area; Turbine Building Fire Areas TB-FZ-11D and TB-FZ-11H; Turbine Building Condenser Area and Office Building—480V Switchgear Room. There were five areas for which exemptions were requested but the Commission concluded that the exemptions requested were not needed. These fire areas were the following: Reactor Building Fire Area RB-FZ-1E, Office Building 480V Switchgear Room, Office Building—Motor Generator Set Room and Office Building—Battery and Electrical Tray Room.

The exemptions are responsive to the licensee's application for exemptions dated April 3, 1985, as supplemented by letters dated July 12 and October 9, 1985.

The Need for the Proposed Action: The proposed exemptions are needed because the features described in the licensee's requests regarding the existing and proposed fire protection at the plant for these items are the most practical method for meeting the intent of Appendix R and literal compliance would not significantly enhance the fire protection capability at the station.

Environmental Impacts of the Proposed Action: The proposed exemptions will provide a degree of fire protection such that there is no increase in the risk of fires at this facility. Consequently, the probability of fires has not been increased and the post-fire radiological releases will not be greater than previously determined nor do the proposed exemptions otherwise affect radiological plant effluents. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed exemptions.

With regard to potential nonradiological impacts, the proposed exemptions involve features located entirely within the restricted areas as defined in 10 CFR Part 20. They do not affect nonradiological plant effluents and have no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed exemptions.

Alternative Use of Resources: This action involves no use of resources not previously considered in the Final Environmental Statement dated December 1974 for the Oyster Creek Nuclear Generating Station.

Agencies and Persons Consulted: The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemptions.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the applications for the exemptions previously listed, which are available for public inspection at the Commission's Public Document Room 1717 H Street, NW., Washington, D.C., and at the Ocean County Library, 101 Washington Street, Toms River, New Jersey 08753.

Dated at Bethesda, Maryland, this 22d day of November 1985.

For the Nuclear Regulatory Commission.,

Dennis M. Crutchfield,

Assistant Director for Safety Assessment, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 85-28730 Filed 12-2-85; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 50-416]

Mississippi Power and Light Co. et al.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-29, issued to Mississippi Power and Light Company, Middle South Energy, Inc., and South Mississippi Electric Power Association (the licensees), for operation of the Grand Gulf Nuclear Station, Unit 1, located in Claiborne County, Mississippi.

The amendment would: (1) Change Technical Specification Figure 6.2.1-1 "Offsite Organization" and make other changes in Section 6 "Administrative Controls" to reflect proposed changes in the Grand Gulf Nuclear Station (GGNS) Nuclear Production Department (NPD); and, (2) terminate the requirement in License Condition 2.C.(28) that an MP&L staff member (or members) who has substantial commercial nuclear power plant operating management experience act as advisor to the vice president in charge of nuclear operations until the plant has operated for at least six months at power levels above 90% of full power. These changes were requested in the licensees' letter dated November 14, 1985.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3)

involve a significant reduction in a margin of safety.

Change (1) consists of a reorganization of the GGNS Nuclear Production Department at the higher levels of management. The major changes would be the deletion of the position of the Senior Vice President who reports to the President resulting in more direct management of the GGNS activities by the President. The responsibilities of the Vice President, Nuclear Operations would be increased by assigning to this position the responsibilities for GGNS Unit 1 project management including preparation of plant modification costs and schedules and management of plant outages which is presently assigned to the Director, Nuclear Engineering and Support. A new position Site Director, GGNS reporting to the Vice President, Nuclear Operations, would have direct responsibilities for GGNS Unit 1 operation and plant modifications. The present position of Director of Nuclear Engineering and Construction would be elevated to Vice President, Nuclear Engineering and Support, and responsibilities would be increased by having the present Director, Quality Assurance and Director, Nuclear Support report to the new position. Except for a change of title for Nuclear Plant Engineering from Manager to Director and for the combining of the Two positions for Nuclear Fuels and Nuclear Services into one position of Manager, Nuclear Services and Fuels, the remaining position titles and responsibilities in the NPD remain unchanged. The NRC staff has made a preliminary review of the proposed changes to the GGNS Nuclear Production Department. The elimination of the position of Senior Vice President would provide a higher level of direct management involvement in GGNS activities; however, the experience of a senior management person would not be available to him. The Director, Quality Assurance would report to the Vice President, Nuclear Engineering and Support who would have direct responsibility for engineering but not for plant modification costs and scheduling. The Director, Quality Assurance would have a direct communication path to the President available to him. The creation of the position Manager GGNS Unit 1 Projects to interface with engineering and construction for plant modifications will permit the unit operations staff to concentrate on plant operations and plant procedures. The position of Site Director, GGNS, will provide a high level of management onsite for solving operation problems and interfacing with offsite organizations, leaving the GGNS General Manager more time to concentrate on day-to-day plant operation. Other changes in the Technical Specifications would be made to make the Safety Review Committee members and quorum consistent with the proposed NPD organization and to assign responsibility for designating review of plant modifications to the Site Director, GGNS rather than the GGNS General Manager.

Based on its preliminary review, the staff concludes that change (1), NPD management organization change, does not involve a significant increase in the probability or consequences of an accident previously analyzed because change (1) will not degrade the effectiveness of the management of GGNS safety related activities related to review and management of proposed plant procedure changes and plant modifications and will enhance management of plant operations. For the same reasons, change (1) does not involve the possibility of a new or different kind of accident from any accident previously evaluated. Change (1) does not involve a significant reduction in a margin of safety because it does not involve any changes to plant equipment design or safety analysis.

Change (2), termination of the license requirement for an experienced management advisor to the Vice President, Nuclear Operations, is requested because licensee's corporate management has had, since March 1985 a Vice President, Nuclear Operations who has 14 years of commercial nuclear power plant operating management experience. In addition, the President, who joined licensee's organization in 1984 has 15 years of commercial nuclear power plant management experience. License Condition 2.C(26) was included in the June 1982 operating license because such experience was lacking in the corporate management at that time. The plant operating history includes approximately 65 cumulative days with the plant above 90% of full power. The present advisor desires to end his services at the end of 1985 and the retention of another advisor for a short term assignment is unlikely to provide substantial input to management. The staff concludes that change (2) does not involve a significant increase in the probability or consequences of an accident previously analyzed nor does it involve the possibility of a new or different kind of accident from any accident previously analyzed because of the substantial relevant experience brought into the organization by the President in early 1984 and by the Vice President, Nuclear Operations in early 1985. Change (2) does not involve a significant reduction in a margin of safety because it does not involve any changes to plant equipment design or safety analyses.

Accordingly, for reasons cited above, the Commission proposes to determine that these two changes do not involve significant hazards considerations.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing. Written comments may be submitted to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Comments may also be delivered to Room 4000, Maryland National Bank Building, Bethesda, Maryland from 8:15 a.m. to 5:00 p.m. Monday through Friday. Copies of comments received may be examined at the NRC Public Document Room, 1717 H Street, NW., Washington, DC.

By January 1, 1986, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be

made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification 3737 and the following message addressed to Walter R. Butler: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Nicholas S. Reynolds, Esquire, Bishop, Liberman, Cook, Purcell and Reynolds, 1200 17th Street, NW., Washington, D.C. 20036, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request, should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the Hinds Junior College, McLendon Library, Raymond, Mississippi 39154.

Dated at Bethesda, Maryland, this 26th day of November 1985.

For the Nuclear Regulatory Commission.

Walter R. Butler,

Director, BWR Project Directorate No. 4, Division of BWR Licensing.

[FR Doc. 85-28728 Filed 12-2-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-423]

Northeast Nuclear Energy Co.; Millstone Nuclear Power Station, Unit No. 3; Issuance of Facility Operating License

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission or NRC), has issued Facility Operating License No. NPF-44 to Northeast Nuclear Energy Company and 15 owners listed below [1] (the licensees) which authorizes operation of the Millstone Nuclear Power Station, Unit No. 3 (the facility), at reactor core power levels not in excess of 170 megawatts thermal in accordance with the provisions of the License, the Technical Specifications and the Environmental Protection Plan with a condition currently limiting operation to five percent of full power (170 megawatts thermal). Authorization to operate beyond five percent of full power will require specific Commission approval.

The Millstone Nuclear Power Station, Unit No. 3 (Millstone Unit 3) is a pressurized water reactor located on the north shore of Long Island Sound in Waterford Township, New London County, Connecticut. The license is effective as of the date of issuance.

The application for the license complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. The Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR Chapter I which are set forth in the

[1] Northeast Nuclear Energy Company acts as agent and representative for the following Owners: Central Maine Power Company, Central Vermont Public Service Corporation, Chicopee Municipal Lighting Plant, City of Burlington, Vermont, Connecticut Municipal Electric Energy Cooperative, The Connecticut Light and Power Company, Fitchburg Gas and Electric Company, Massachusetts Municipal Wholesale Electric Company, Montaup Electric Company, New England Power Company, Public Service Company of New Hampshire, The United Illuminating Company, The Village of Lydonville Electric Department, Western Massachusetts Electric Company, and Vermont Electric Generation and Transmission Cooperative, Inc.

license. Prior public notice of the overall action involving the proposed issuance of an operating license was published in the Federal Register on March 4, 1983 (48 FR 9408).

The Commission has determined that the issuance of this license will not result in any environmental impacts other than those evaluated in the Final Environmental Statement since the activity authorized by the license is encompassed by the overall action evaluated in the Final Environmental Statement.

For further details with respect to this action, see: (1) Facility Operating License No. NPF–44, with Technical Specifications (NUREG–1161) and the Environmental Protection Plan; (2) the report of the Advisory Committee on Reactor Safeguards, dated September 10, 1984; (3) the Commission's Safety Evaluation Report, dated July 1984 (NUREG–1031), and Supplements 1 through 3; (4) the Final Safety Analysis Report and Amendments thereto; (5) the Environmental Report and supplements thereto; (6) the Final Environmental Statement dated December 1984 (NUREG–1064); and (7) Assessment of the Effect of License Duration on Matters Discussed in the Final Environmental Statement for the Millstone Nuclear Power Station, Unit No. 3.

These items are available for inspection at the Commission's Public Document Room located at 1717 H Street, NW., Washington, D.C. 20555, and in the Waterford Public Library, Rope Ferry Road, Route 156, Waterford, Connecticut 06385. A copy of Facility Operating License NPF–44 may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing. Copies of the Safety Evaluation Report and Supplements 1 through 3 (NUREG–1031) and the Final Environmental Statement (NUREG–1064) may be purchased at current rates from the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington DC 20013–7982 or by calling (202) 275–2060 or (202) 275–2171.

Dated at Bethesda, Maryland, this 25th day of November 1985.

For the Nuclear Regulatory Commission.

B.J. Youngblood,

Chief, Licensing Branch No. 1, Division of Licensing.

[FR Doc. 85–28729, Filed 12–2–85; 8:45 am]

BILLING CODE 7590–01–M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Mainstem Passage Advisory Committee; Meeting

AGENCY: The Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power planning Council).

ACTION: Notice of meeting.

Status: Open.

SUMMARY: The Northwest Power Planning Council hereby announces a forthcoming meeting of its Mainstem Passage Advisory Committee of the Mainstem Passage Advisory Committee to be held pursuant to the Federal Advisory Committee Act, 5 U.S.C. Appendix I, 1–4. Activities will include:

- BPA nonfirm costs and impacts for projects.
- Council's SAM analysis of spill costs.
- FISHPASS spill summary.
- Other.
- Public comment.

DATE: December 3, 1985, 1:00 p.m.

ADDRESS: The meeting will be held in the Council's Meeting Room, 850 SW. Broadway, Suite 1100, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: Peter Paquet, 503–222–5161.

Edward Sheets,

Executive Director.

[FR Doc. 85–28646 Filed 12–2–85; 8:45 am]

BILLING CODE 0000–00–M

PENSION BENEFIT GUARANTY CORPORATION

Request for Extension of Approval Under the Paperwork Reduction Act of the Information Collection Requirement Contained in 29 CFR Part 2622

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of request for OMB approval of extension.

SUMMARY: The Pension Benefit Guaranty Corporation has requested approval by the Office of Management and Budget for an extension of the expiration date of a currently approved information collection requirement (1212–0017) without any change in substance or in the method of collection. The information collection, which is scheduled to expire on December 31, 1985, is contained in PBGC's regulation on Employer Liability for Single Employer Plan Terminations; Rules Pertaining to Withdrawals from and Terminations of Plans to Which More Than One Employer Contributes Other Than Multiemployer Plans, 29 CFR Part 2622. This regulation requires that, if an employer claims that its net worth limits the amount of employer liabilities owing to the PBGC upon plan termination, it must notify the PBGC and submit net worth information that will enable the PBGC to calculate the correct amount of employer liability. The effect of this notice is to advise the public of PBGC's request for OMB approval of an extension for this information collection.

ADDRESSES: All written comments should be addressed to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for the Pension Benefit Guaranty Corporation, 3208 New Executive Office Building, Washington, DC 20503. The request for extension will be available for public inspection, and copying, at the PBGC Communication and Public Affairs Department, Suite 7100, 2020 K Street, NW., Washington, DC 20006, between the hours of 9:00 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Renae R. Hubbard, Special Counsel, Corporate Policy and Regulations Department, Code 611, 2020 K Street, NW., Washington, DC 20006; telephone 202–254–4856 (202–254–8010 for TTY and TDD). These are not toll-free numbers.

Issued at Washington, DC, this 26th day of November 1985.

Kathleen P. Utgoff,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 85–28707 Filed 12–2–85; 8:45 am]

BILLING CODE 7708–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IA–998; File No. 803–44]

Conning/Bigler Limited Partnership; Application and Opportunity for Hearing

November 26, 1985.

Notice is hereby given that Conning/Bigler Limited Partnership ("Conning/Bigler" or the "General Partner") 41 Lewis Street, Hartford, Connecticut 06103, the general partner of Conning Insurance Capital Limited Partnership (the "Fund"), for itself and on behalf of the affiliated investment advisers referred to below, filed an application on December 6, 1984, and amendments thereto on July 3, 1985, and November 15, 1985, for an order of the Commission, pursuant to section 206A of the Investment Advisers Act of 1940 (the "Act"), for exemptions from (1) the

prohibition on performance-based compensation in section 205(1) of the Act as applicable to the Fund and a companion foreign limited partnership as described below and (2) certain of the record-keeping requirements of Rules 204–2(b) and (c) thereunder. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the text of the applicable provisions thereof.

The application states that the Fund is organized as a limited partnership. Conning/Bigler, which will register as an investment adviser under the Act and will be the sole general partner of the Fund, will have exclusive authority and responsibility for the selection of investments and the management of the Fund and will devote substantial time and resources to the operation of the Fund. The application states that the primary investment objective of the fund is long-term growth of capital. The Fund's assets will be invested in companies and other entities engaged in varius segments of the insurance business and other insurance-related financial services enterprises. The application states that it is anticipated that the partners, employees and certain affiliates of the partners of Conning/Bigler will become actively involved in the management of some of the companies in which the Fund invests.

According to the application, Conning/Bigler is a limited partnership, of which Conning Investment Partners is the general partner and Bigler Partners and Peter M. Seigle are the limited partners. The partners of Conning Investment Partners are also partners of Conning & Company, which is a registered investment adviser under the Act as well as a brokerage and insurance consulting firm. Its institutional research covers a wide range of primary and emerging growth companies in the property-casualty, reinsurance, life or accident and health insurance and insurance broker segments of the business. Harold E. Bigler, Jr., a stockholder of Bigler Partners, Inc. which is the sole general partner of Bigler Partners, and Peter M. Seigle are general partners of Bigler, Lattimer & Seigle, which is a registered investment adviser under the Act. Mr. Bigler is also the sole stockholder of Bigler Investment Management Company, Inc., which is also a registered investment adviser under the Act. Messrs. Bigler and Seigle are also stockholders of New England Asset Management, Inc., which is also a registered investment adviser under the Act. The foregoing registered investment advisers, together with any other registered investment advisers with which any partner of Conning/Bigler or any affiliate of any partner of Conning/Bigler becomes affiliated in the future, are hereinafter sometimes referred to as the "Affiliated Investment Advisers".

It is represented that Conning/Bigler will receive an annual management fee and a performance fee of 20% of net realized capital gains, as more fully described below. The application further states that Conning/Bigler will pay the ordinary expenses of managing the assets and administering the Fund. Conning/Bigler will enter into an investment advisory contract with Conning & Company for the provision of investment advisory and other investment support services. Conning/Bigler will also enter into an agreement with Bigler Partners for the provision of administrative services. It is stated that the annual fees paid by Conning/Bigler to Conning & Company and Bigler Partners will be a percentage of the management fees paid to Conning/Bigler by the fund. It is represented that Conning/Bigler will invest in the Fund an amount equal to 1% of the aggregate capital contributions of all partners.

The application further states that the Fund will make a private offering to selected investors of $40,000,000 of limited partnership interests. The Fund will have a minimum of $12,000,000 of committed capital. Investors will be required to invest a minimum of $1,000,000 in the Fund. Although the General Partner may waive this requirement, it is represented that in no event will an investor be permitted to invest less than $150,000. The limited partners will each be required to state in writing that the limited partner has a minimum net worth of at least $1,000,000; that such limited partner is investing at least $150,000 in the Fund; and that, for limited partner institutional investors, the investment does not exceed 20% of its net worth. For limited partners who are natural persons, unless such limited partnere is investing at least $1,000,000 in the Fund, the amount of his investment cannot exceed 33% of his total invested capital.

The application represents that limited partnership interests will be offered and sold only to institutional investors, such as insurance companies and pension plan trusts, and other investors, including individuals, who qualify as "accredited investors" within the meaning of Regulation D of the Securities Act of 1933. Interests in the Fund will be sold only to investors who Conning/Bigler reasonably believes are sophisticated and able to bear the economic risks of an investment in the Fund and have, either alone or together with their representatives, such knowledge and experience in financial and business matters so as to be capable of evaluating the merits and risks of the proposed investment, including the proposed method of compensating the General Partner.

The application further states that the Fund will maintain on its books a capital account for each partner. Each partner's capital account will be credited with the capital contributions made by such partner and increased by the amount of net operating income and net realized capital gains allocated to such partner, and will be decreased by the amount of net operating losses and net realized capital losses allocated to each partner and by the amount of any distributions made to such partner. The allocation and distribution provisions will prevent the Genral Partner from receiving more than 20% of the cumulative net capital gains of the Fund over its entire term. This is accomplished by (1) prohibiting any distribution to the General Partner of its performance fee until each limited partner has received distributions, including tax distributions, equal to the sum of (a) the net ordinary income allocated to it, plus (b) its capital contributions, plus (c) an amount which, together with all other distributions made to such limited partner, is sufficient to provide an internal rate of return of 10% per annum on the amount of such capital contributions.

The provisions for the allocation of the Fund's income, gains and losses are fully set forth in the application. The procedures for Fund distributions are also described in full therein. The General Partner may distribute cash or securities to the limited partners. The Fund's advisory committee, selected by Conning/Bigler and composed of representatives of the partners and other individuals, shall approve the methodology used for each valuation of non-marketable securities made for the purpose of making a distribution in kind. If the advisory committee shall disapprove any such methodology or if any such approved methodology shall be objected to by one-quarter in interest of the limited partners, the value of the distributed securities will be conclusively determined by an independent appraiser appointed by the General Partner and satisfactory to two-thirds in interest of the limited partners.

The application further states that to facilitate participation by foreign

investors, Conning/Bigler is also forming a limited partnership under the laws of the Cayman Islands (the "Foreign Fund" and, together with the Fund, the "Funds"). Conning/Bigler will be the invested general partner of the Foreign Fund and will have exclusive responsibility for the selection of investments of the Foreign Fund. It is represented that the foreign investors have expressed the desire, for their own reasons, to make their investment through a corporate entity. Accordingly, in lieu of purchasing limited partnership interests directly in the Foreign Fund, the foreign investors will purchase shares of a corporation organized under the laws of the Cayman Islands, which will be the sole limited partner of the Foreign Fund. The shares of this corporation will be offered only to investors who are neither citizens of nor resident in the United States and who meet the criteria described above with respect to the limited partners of the Fund.

According to the application, the investment objective and policy of the Foreign Fund will be the same as that of the Fund. It is anticipated that the Funds will invest in the same investments, in proportion to the amounts of their respective capital, except to the extent that applicable law prohibits or limits foreign investment, the investment may have unfavorable tax consequences to the foreign investors or, it is alleged, other similar factors make a particular investment by the Foreign Fund inadvisable. The partnership agreement of the Foreign Fund will be identical in all material respects to the partnership agreement of the Fund described above.

It is asserted that section 205(1) was adopted to protect investors from compensation arrangements which would encourage advisers to take undue risks in managing the funds of their clients in order to realize or increase an advisory fee and that such a danger will not exist under the Funds' partnership agreements which will be structured such that Conning/Bigler's performance fee is earned only if the Funds are profitable over their entire term and such that Conning/Bigler not only share in the gains but also bears a portion of any losses. The terms of the partnership agreement will provide that net realized capital losses are to be allocated to Conning/Bigler to the extent of previously allocated net realized capital gains. This, coupled with the minimum rate of return to the limited partners, means that Conning/Bigler will not be entitled to share in any gains unless at the end of the terms of the Funds the cumulative amount of such realized gains exceeds the cumulative amount of such realized losses by more than the amount of gains required to provide the limited partners with an internal rate of return of 10% per annum on the amount of their contributed capital. Requiring the return of capital plus the specified rate of return to the limited partners prior to the distribution of the performance fee places the performance fee earned on early gains at the risk of subsequent losses and prevents the General Partner from receiving a performance fee which exceeds the amount to which it would be entitled if the performance fee were calculated on the basis of realized gains net of unrealized losses. The partnership agreements will provide that, upon dissolution of the Funds and after giving effect to the final distribution of all assets, the General Partner must return to the Funds the amount by which its capital account is less than zero.

The application also seeks an exemption from section 204 of the Act and Rules 204–2 (b) and (c) thereunder which may be interpreted so as to require Conning/Bigler to maintain designated books and records with respect to each limited partner of the Funds. It is asserted that the purposes of Rule 204–2 (b) and (c) are amply served by maintaining separate capital accounts for each partner.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than December 18, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Conning/Bigler Limited Partnership at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon it own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85–28669 Filed 12–2–85; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–22663; SR–NYSE–85–17]

Self-Regulatory Organizations; New York Stock Exchange, Inc., Order Approving Proposed Rule Change

I. Introduction

The New York Stock Exchange, Inc. ("NYSE") submitted on May 15, 1985, copies of a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") to modify its Rule 412 to improve the timeliness and efficiency of customer account transfers among NYSE member firms.[1] The proposed rule change provides generally that all customer accounts must be transferred, through automated account transfer facilities, within ten days of receipt of the customer's transfer request. Amendment No. 1 to the proposed rule change specifies certain procedural details and provides exemptions from certain of the rule's general time frames.[2]

In conjunction with the NYSE's proposal, the National Securities Clearing Corporation ("NSCC") has developed an automated customer account transfer system ("ACATS").[3] This system contains several important features: A centralized mechanism for communicating customer account transfer information betwen firms involved in a transfer; and automated means for monitoring compliance with the requirements of the rule; and automated procedures to facilitate transferring customer assets within the required time frames.

NSCC is currently operating its system on a pilot basis with a limited number of participating firms. It proposes to expand firm participation gradually and achieve full implementation by the first quarter of 1986.[4]

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[1] The proposed rule change was noticed in a Commission release, Securities Exchange Act Release No. 22080 (May 28, 1985), 50 FR 23371 ("Notice").

[2] The NYSE filed Amendment No. 1 to the proposed rule change on October 22, 1985. This amendment was noticed in Securities Exchange Act Release No. 22557 (October 25, 1985), 50 FR 45692.

[3] NSCC's proposed rule change to establish ACATS was noticed in Securities Exchange Act Release No. 22276 (July 29, 1985), 50 FR 31450, and approved in Securities Exchange Act Release No. 22481 (September 30, 1985), 50 FR 41274.

[4] In its proposal the NYSE has stated its intention to delay required use of the NSCC system until NSCC's system expansion is completed. The NYSE stated that it would make the rule effective, at a minimum, 90 days following Commission approval of the proposed rule change to allow member firms adequate time to make necessary operational and programming changes.

Recently, the National Association of Securities Dealers, Inc. ("NASD") filed a proposed rule change

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II. Background

The NYSE proposal is designed to cure weaknesses in its current Rule 412. The current rule provides for a ten-day time frame in which to transfer a customer's account, and requires member firms to establish fail to deliver and fail to receive contracts[5] in the event the securities are not transferred within the allotted time. However, the current rule does not require these procedures to be followed.[6] Moreover, it permits member firms to delay customer account transfers for extended periods while disputing with the customer the amount of securities or the money balances in the customer's account.

Those difficulties with the NYSE's current account transfer rule have been aggravated by a burgeoning number of customer account transfers[7] and a proliferation of new products that entail complicated transfer processing.[8] In response, the NYSE has had to work increasingly with its largest retail member firms to expedite pending transfers.

Given that background, both the industry and the Commission recognize that efficient customer account transfers are critical to street-name account managment. Moreover, in an environment is which certificate immobilization and use of book-entry facilities are expanding, customers simply must be able to move street-name positions from firm to firm promptly and accurately. For those reasons, a committee comprised of representatives from members' transfer of account departments (the "412 Committee"), formed nearly ten years ago, was reactivated recently to help the NYSE, NASD and NSCC develop a modern automated customer account transfer system.

III. NYSE Proposal

The NYSE's proposed rule provides generally that when the customer gives written notice to his carrying firm to transfer his account to a designated receiving firm,[9] both the receiving firm and the carrying firm must expedite the transfer.[10] The proposed rule then sets forth specifically how transfer should be accomplished.

Once the receiving firm has received the customer's signed account transfer request form, the rule requires that the receiving firm immediately notify the carrying firm. The carrying firm then has five business days from receipt of the transfer notice to either (i) validate and return the instruction with a statement reflecting the securities and money balances in the customer's account; or (ii) take exception to the transfer instruction.[11] The carrying broker cannot reject the account transfer request based on a dispute with the customer and/or receiving firm concerning the contents of the account.[12] Instead, the carrying firm must transfer whatever securities and money balances are shown for that customer on its records.

Once the carrying firm has validated the transfer instruction, the carrying firm has five business days to complete the transfer.[13] If the customer's securities have not been delivered to the receiving firm within five business days, as required under the Rule, both the carrying and receiving firms must establish, as appropriate, fail to deliver or fail to receive contracts respecting the deliveries that have not occurred. At that point, the account is deemed to be transferred; and the fail positions must be closed out[14] within ten business days.[15]

As noted previously, in addition to establishing specific timeframes and procedures for completing customer account transfers, the NYSE rule proposal requires those member firms that are also members of a registered clearing corporation having automated customer account transfer facilities to effect customer account transfers through those facilities.[16] At present,

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to establish customer account transfer procedures for its member firms. The NASD's proposed rule change also requires use of automated customer account transfer facilities. The NASD's proposal rule change, which parallels the NYSE proposal, is being processed for publication and comment.

[5] A fail to deliver occurs when the selling broker does not deliver the security to the buying broker by settlement date. A fail to receive is created for the purchasing broker upon the selling firm's failue to delievr.

[6] Current Rule 412 states that, upon receipt of a customer account transfer request, the receiving firm (*i.e.*, the firm to which the customer's account is to be transferred "may" submit the customer's statement to the carrying broker (*i.e.*, the firm from which the account is to be transferred). Also, when the account information is verified by the carrying broker, the receiving broker "may" give the carrying broker written notice to complete the transfer within five days.

[7] The growing problem with customer account transfers is reflected by the increasing numbers of customer complaint letters received by the Commission's Office of Consumer Affairs. The number of customer complaints concerning account transfers has increased more than four-fold from fiscal yesr 1982 to present. In 1982, the Commission received 285 complaints about customer account transfers as compared to 1,220 in fiscal 1985. For the last three years, the Commission has received more complaints about customer account transfer delays than about any other type of problem.

[8] Most of the difficultues are encountered with the transfer of Individual Retirement Accounts ("IRA") and Keough accounts, which involve third-party trustees. Also, special problems exist in transferring firm proprietary products, such as financial management accounts with check writing and credit/debit card privileges, mutual funds and zero coupon bonds.

[9] The NYSE's proposed rule applies only to the transfer of an entire account. *See* Interpretation to proposed Rule 412(a) .01.

[10] Proposed Rule 412(a).

[11] Proposed Rule 412(b)(1).

[12] By so limiting the basis on which a carrying firm can reject a customer account transfer request, the NYSE has addressed a major deficiency in its current rule. The proposed interpretations provide, however, that the carrying firm may take exception to the transfer instruction for four reasons: (1) It has no record of the account; (2) the transfer form is incomplete; (3) there is an improper signature on the transfer instruction; or (4) the customer has failed either to return unused checks or credit/debit cards for a financial services account or to provide an affidavit attesting to the loss of the unused checks or cards. See Interpretation to proposed Rule 412(b)(1) .01.

[13] Proposed Rule 412(b)(3). The proposed interpretations also enable the receiving firm, at the point of validation, to reject the transfer if the account is inconsistent with that firm's credit parameters. *See* Interpretation to proposed Rule 412(b)(1) .01.

[14] A fail to deliver contract is closed out when either (i) the carrying firm delivers the security it is obligated to deliver, or (ii) the receiving firm goes into the market to "buy in" the security. The exchanges, NASD and NSCC each have established procedures for buying in securities and settling street-side disputes over liability for money differences between the settlement price of the security and the price at which the fail to deliver was satisfied. *See, e.g.*, NYSE Rules 282 *et seq.*

[15] Proposed Rule 412(c). This provision, together with additional procedures set forth in the interpretations, supersedes the NYSE's general buy-in rules for purposes of account transfer processing. In contrast to the NYSE's ten-day close-out provision, the Commission's Rule 15c3-1 (the Net Capital Rule), provides that for any fail to deliver contract outstanding more than five days a broker-dealer must apply a haircut to the position and take a charge from net capital. *See* Rule 15c3-1(c)(2)(ix). The Division of Market Regulation ("Division") accordingly has advised the NYSE that it would not recommend enforcement action if broker-dealers did not take the net capital charge required by Rule 15c3-1 for fail to deliver contracts established under Proposed Rule 412. *See* Interpretation to Proposed Rule 412(b)(3) .01.

[16] NSCC's ACAT system plays a key central role in effecting the automated transfer of securities positions. All securities in a customer's account that are eligible for processing in NSCC's continuous net settlement ("CNS") system will enter NSCC's CNS accounting operations on trade date plus three. For customer securities that are not eligible for CNS, NSCC will produce receive and deliver orders for the respective firms and will automatically credit and debit the appropriate members' money settlement accounts for the value of the items indicated on the deliver and receive orders. (The proposed interpretations require the carrying firm to assign a current market value to all securities to be transferred. See proposed Interpretation to Rule 412(b)(1).03).) The exchange of securities and money on non-CNS items is to be accomplished by the member firms outside the NSCC system. *See* NSCC Rule 50, sections 10, 11, and 12.

Because some member firms participate in NSCC on a limited basis, and do not have arrangements to settle at NSCC, the NYSE rule would only apply to those firms that could use NCSS's automated account transfer facility. *See* Interpretation to Proposed Rule 412(e) .01. The NYSE rule requires that, when other clearing corporations develop automated account transfer services, NYSE members that settle through those clearing corporations must use their automated facilities.

NSCC is the only clearing corporation that has an automated customer account transfer service.

The NYSE proposal also authorizes the exchange to exempt from the provisions of the rule any member, class of members, type of account, or security—either unconditionally or on a case-by-case basis.[17] Finally, the NYSE proposed rule would permit the exchange to impose a discretionary "late fee" of $100 per account for each day that the member firm failed to follow the rule.

IV. Discussion

A. General

The NYSE's proposed modifications to Rule 412 represent a major step toward assuring, industry-wide, that customer accounts will be transferred in a timely manner. The proposed rule establishes uniform procedures and specific time frames; provides increased certainty to customers that, as of settlement date, most positions in most accounts will be deemed transferred; and ensures that assets and funds will be available for customers' use at the receiving firm on a timely basis. Indeed, by requiring firms to establish fail positions on their books relative to customer securities that have not been transferred within the prescribed time frames, the rule transfers the risks associated with transfer delays from customers to broker-dealers. The rule thus creates significant incentives to transfer accounts on time, while extending traditional close-out remedies to the customer account transfer process. In that way, the rule seems well-designed to ensure both timely and financially responsible transfers.[18]

In addition, requiring the use of automated clearing agency account transfer facilities extends the proven benefits of National System services to the customer account transfer process. Injecting centralized clearing facilities into the transfer process promotes timely delivery and receipt of communications between the receiving and carrying firms and enables effective compliance monitoring. Also, use of an automated system should enhance efficiency and reduce expenses in account transfer processing by eliminating, for all depository-eligible securities, the manually intensive handling of certificates and related paper between the two broker-dealer firms. Thus, by assuring that customers' accounts will be transferred promptly and accurately, the NYSE proposal should reduce risk, expense and potential exposure for customers.

As noted above, the industry momentum behind the NYSE proposal was based on a recognition that, in a period of increased reliance on book-entry facilities, prompt and efficient account transfer arrangements are increasingly important. More to the point, increased immobilization of securities will be more difficult to the extent customers lack confidence that street name positions will be tranferred from one firm to another promptly, efficiently and accurately. In view of those concerns, the Commission believes that the NYSE proposal should advance National System objectives be removing a potential impediment to increased securities immobilization. Indeed, the NYSE's proposed rule change should encourage customers to maintain their securities in street name at their broker-dealer whenever possible, and thereby promote the further immobilization of the securities certificate.[19]

B. Public Comments and NYSE Interpretations

The Commission has received three comments about the NYSE proposal. *See* later from James F. McNamara, Senior Vice President, Directors of Operations, Advest, to Secretary, SEC, June 18, 1985 ("Advest letter"); letter from Joseph R. Hardiman, Chief Operating Officer, Alex. Brown & Sons, Inc., to Richard Ketchum, Director, Division of Market Regulations, SEC, August 5, 1985 ("Alex Brown letter"); and letter from Melvin B. Taub, Vice President, Securities Operations Division, Merill Lynch & Co., Inc., to John P. Wheeler III, Security, SEC, August 19, 1985 ("Merrill letter"). As discussed at greater length below, each of the commentors strongly endorsed the NYSE's proposal, but suggested some areas in which the rule might be clarified or strengthened.

One commentor, Merrill Lynch, applauded the NYSE's effort to set enforceable standards for the industry for transferring customer accounts,[20] but suggested that the rule not apply to securities that are not depository eligible. In Merrill Lynch's view, it is impossible to transfer these securities within tight time frames, and it is unduly burdensome to require firms to establish fails for securities in which transfer delays are beyond their control. For such securities, it suggested that member firms be required merely to report a transfer to the relevant SRO.

The Commission appreciates those comments, but believes that the proposed rule as refined in the interpretations accommodates most of the known difficulties in transferring different types of assets. Among other things, the Exchange has created exemptions in its proposed interpretations that provide members with substantial latitude in certain circumstances.[21] For instance, because transfer of IRAs often requires processing by a third party trustee on both the delivering and receiving end of a customer account transfer, the NYSE's proposed interpretations allow ten days instead of five for the carrying firm to validate an IRA account transfer request. Similarly, the NYSE's interpretations do no require firms to establish fail positions for certain types of securities that may be impossible to deliver (and thus impossible to close out). In addition, the proposed interpretations extend from ten to thirty days the period in which firms are required to close out fail positions for securities that are difficult to deliver expeditiously.[22] Finally, the NYSE retains authority to grant case-by-case exemptions in the event that particular transfers or closeouts have an unexpected and burdensome impact on firms.

The Commission believes that those interpretations create significant compliance flexibility and reduce processing burdens that otherwise might be posed by strict time frames in the Rule. Moreover, the Rule provides the NYSE with needed flexibility to adjust the Rule and the Interpretations as future conditions require.[23] Because

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[17] Proposed Rule 412(f). The NYSE plans to use this exemptive authority because of "difficulties encountered in readily transferring certain accounts and assets (e.g., IRA and Keogh accounts, limited partnership interests, certificates of deposit) within the prescribed time periods."

[18] To the extent the customer and the carrying firm disagree on the contents of the account that was transferred, the customer will need to resolve those discrepancies with the carrying firm after the account has been deemed transferred under the rule.

[19] The SEC held a series of workshops in February and March, 1985, which explored ways to further immobilize the securities certificate. The workshops revealed that perceived difficulties in promptly transferring street-name accounts may be one obstacle to greater immobilization of the paper certificate. *See* SEC Staff Report, Progress and Prospects: Depository Immobilization of Secretary, and Use of Book-Entry Systems, June 14, 1985, at 15.

[20] *See* Merrill letter, cited in text supra.

[21] Under the rule, exemptions may be created for any type of security or account.

[22] Significantly, this exemptive provision does not delay the customer's access to securities in its receiving firm account.

[23] When fashioning exemptions concerning a class of accounts, securities or members, the NYSE must ensure that it complies with the requirement to file proposed rule changes with Commission pursuant to section 19(b)(1) of the Act and Rule 19b–4 thereunder.

automated account transfer processing is still in the developmental stage, the Commission anticipates that the Rule will be applied, and amended if necessary, with appropriate sensitivity to special circumstances and system developments. Only as the Exchange and the industry gain experience with the day-to-day operations of the rule and NSCC's system will it be possible to determine whether the proposed procedures are optimal. At the same time, however, the Commission appreciates the NYSE's and the industry's focus on promptly implementing automated programs designed to ensure swift and effective account transfers. Thus, the Commission believes that the NYSE Rule and NYSE interpretive authority will be used with that primary objective in view.

Two other comment letters on the proposed rule change addressed matters subsequently covered in the NYSE's interpretations.[24] One commentor, Advest,[25] suggested that the NYSE incorporate several provisions into the body of the rule, such as providing the receiving firm with the right to reject an account, and articulating special procedures relating to the transfer of IRAs and financial service accounts. Those items have been included in the NYSE's proposed interpretations, and they are now part of the NYSE rule. The other commentor, Alex. Brown & Sons,[26] questioned whether carrying firms should be permitted to reject transfer requests in instances in which customers have not returned unused checks and credit cards issued in connection with a financial services account or have not provided affidavits attesting to the loss or destruction of the checks or cards. This commentor noted that banks and credit card issuers providing similar services have no such requirements, and it suggested that a carrying firm should be able to refuse transfer only if the customer failed to authorize the broker to dishonor checks or charges subsequent to the transfer request.

Ultimately, it may be appropriate to eliminate that differential treatment of brokerage and banking customers, and the Commission encourages the NYSE and industry groups to explore how to achieve that ultimate goal. For the time being, however, the Commission believes that the NYSE requirement does not create an unreasonable burden or unfair obligation on customers that wish to transfer financial services accounts. Financial services account customers ordinarily have substantial investment assets and some sophistication in money management, and it should not be difficult or confusing for them to have to return unused checks and cards or certify to their loss. In contrast, precluding broker-dealers from requesting unused checks and cards prior to an account transfer could require significant adjustments for some firms. Many firms, for example, currently require existing customers, when shifting assets from a financial services account into another account at the same servicing firm, to return credit cards and checks or certify to their loss before terminating the financial services account. For such firms, contractual arrangements, and perhaps even banking arrangements, are designed around that card and check surrender process. Therefore, at this developmental stage in the customer account transfer process, it seems inappropriate to require firms to change those arrangements and operations simply to produce uniformity between bank credit card/checking account programs and broker debit card programs.

C. "Late Fee"

The NYSE's proposed rule provides that the Exchange may impose a fee on a member organization for failing to adhere to the time frames or procedures required by the rule or its interpretations. The NYSE states that the "late fee" will be imposed "when patterns of dilatoriness in transfer of accounts are detected involving a particular member organization." [27]

Section 6(b)(4) of the Act requires that exchange rules "provide for the equitable allocation of reasonable dues, fees, and other charges among its members . . . using its facilities." The Commission has interpreted this section to require that exchange members be assessed fees that are equitably allocated among members and reasonable in light of the exchange services provided.[28] In this case, the Exchange is not providing a service in any traditional sense, and a firm's failure to comply does not create additional Exchange processing or administrative work outside routine compliance and enforcement activity.[29] Rather, the "late fee" is functionally a sanction—in the nature of a disciplinary fine—for violating an Exchange rule. As such, that fine must be imposed in a manner consistent with the statute.[30]

In its filing, the NYSE indicated that it needed authority to levy penalties so that it could promptly discipline any member that improperly disregards its responsibility under Rule 412. In the NYSE's view, elaborate procedural requirements would frustrate the exercise of that authority by creating the possibility of delay and expense in fining members for Rule 412 violations.

The Commission is sympathetic with the NYSE's desire to act swiftly to enforce compliance and ensure that customer account transfers are not unnecessarily delayed. Moreover, the Commission believes that the NYSE should have an efficient, inexpensive method for imposing administrative fines.[31] The rule proposal, however, contains no standards concerning aggregate fee amounts or fee frequency, and it contains no guidelines respecting circumstances under which fees would be imposed. Thus, the fairness of any "fine" or the equitable character of any particular "fee" could ony be tested by reference to particular circumstances—a result for which the Act requires either an opportunity for a hearing or a fuller set of fee parameters for modest "administrative fines".

Accordingly, the Commission anticipates that the NYSE will continue to develop, and will file with the Commission, standards and guidelines for administratives "fees" for insubstantial violations. For example, the Exchange may decide, for convenience, to include that authority in existing Rule 476, concerning other types of "traffic tickets".[32] Pending a determination, if any, to file such a proposed rule change, however, the Commission expects the NYSE to administer any "late fee" under Rule 412 pursuant to the requirements of the Act

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[24] These comment letters were received before the proposed interpretations in Amendment No. 1 were published for comment.

[25] *See* Advest letter, at text preceding n. 20 *supra*.

[26] *See* Alex. Brown letter, at text preceding n. 20 *supra*.

[27] *See* Notice, n. 2 *supra*, 50 FR 22372.

[28] *See* Securities Exchange Act Release No. 20643 (April 9, 1984), 50 FR 15042; Securities Exchange Act Release No. 21900 (March 28, 1985), 50 FR 13297.

[29] The automated account transfer service, in fact, is supplied by NSCC, which is imposing its own provider fees. The Exchange of course, must perform compliance monitoring and enforcement functions, but traditionally the cost for those functions are allocated to overhead, not to fee-for-service charges. *See* Securities Exchange Act Release No. 22481 (September 30, 1985), 50 FR 41274.

[30] Section 6(b)(7) of the Act requires that the exchange provide a "fair procedure for the disciplining of members." Such fairness includes bringing specific charges, providing notice of those charges, and providing an opportunity for a hearing. *See* section 6(d)(1) of the Act.

[31] Indeed, the Commission realizes the difficulties in anticipating the extent to which fees will be imposed in the pilot customer account transfer system.

[32] See Securities Exchange Act Release No. 21688 (Jan. 25, 1985), 50 FR 5025 (Feb. 2, 1985).

governing disciplinary actions, including section 6(b)(7), 6(d)(1), and 19(d).

V. Conclusion

For the reasons discussed in this order, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, in particular, the requirements of section 6 and Section 17A.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be and hereby is approved.

For the Commission by the Division of Market Regulation pursuant to delegated authority.

Dated: November 26, 1985.

John Wheeler,

Secretary.

[FR Doc. 85-28668 Filed 12-2-85; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applicants for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

November 26, 1985.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following security:

Allied-Signal, Inc.

Common Stock, $0.10 Par Value (File No. 7-8696)

This security is listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before December 17, 1985, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549.

Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-28755 Filed 12-2-85; 8:45 am]

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[Securities Exchange Act of 1934, Release No. 22665; Filed No. 57-787]

Approval of Amendments to the Plan for the Designation of National Market System Securities Submitted by the National Association of Securities Dealers, Inc.

November 26, 1985.

On December 18, 1984, the National Association of Securities Dealers, Inc. ("NASD") filed with the Commission pursuant to Rule 11Aa2-1 under the Securities Exchange Act of 1934 ("Act")[1] proposed amendments to its "National Market System Securities Designation Plan with respect to NASDAQ Securities" ("Designation Plan").[2] The Designation Plan provides for the designation of securities meeting the criteria in Rule 11Aa2-1 for designation as National Market System ("NMS") Securities.

The proposed amendments primarily are intended to incorporate language changes reflecting amendments to Rule 11Aa2-1 that resulted in an expansion of the number of securities eligible for designation.[3] The proposed amendments also delete obsolete language, simplify procedures by which issuers apply for designation, and reflect changes in NASD procedures required to coordinate designation of NMS Securities with the Federal Reserve Board's administration of its OTC Margin List.[4]

On January 17, 1985, the NASD's amendments were temporarily approved for a period not to exceed 120 days from the publication of notice of approval.[5] No comments were received regarding the release. The Commission stated at that time that "the maintenance criteria proposed by the NASD require further study before they can be approved on a permanent basis because the criteria are significantly lower than the newly amended Tier 2 criteria." Specifically, the Commission noted that the NASDAQ National List eligibility criteria did not include separate maintenance criteria so that a company would have to meet continuously the initial eligibility standards to remain on the National List. This created an apparent anomalous result because, pursuant to the proposed maintenance criteria for NMS Securities, an NMS Security could retain its designation and be reported in the newspaper even though it fell below the National List eligibility standards.

At the conclusion of the initial 120 day approval period the issues remained largely unresolved. Accordingly, the NASD resubmitted the proposed amendments and the Commission determined to extend the period of effectiveness for another 120 days while the area was studied further.[6]

On November 25, 1985, the NASD filed a proposed rule change pursuant to Section 19b under the Act and Rule 19b-4 thereunder to amend Part VII of Schedule D of the NASD's by-laws to provide maintenance criteria for National List securities equivalent to the proposed maintenance criteria for NMS Securities. For an issuer's security to remain eligible for inclusion in the National List, the rule change would require that the issuer have 200,000 publicly held shares with a market value of $2 million or more and either annual net income of $200,000 for the previous fiscal year or in two of the last three fiscal years or net worth of at least $1 million. The Commission currently is soliciting comment on this proposed rule change.[7] In addition, as noted in the January Release, the proposed maintenance criteria for NMS Securities are similar to the original maintenance criteria except for the deletion of the $1 million annual trading volume standard. While the Commission had some concern over the deletion of this

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[1] 17 CFR 240.11Aa2-1 ("Rule"). Pursuant to the Rule, certain actively-traded over-the-counter ("OTC") securities have been or will be designated as NMS Securities. Upon designation, an NMS Security is deemed a "reported" security, as that term is defined in Rule 11Aa3-1(a)(4) under the Act, and becomes subject to, among other things, the Commission's last sale reporting rule, Rule 11Aa3-1 under the Act.

[2] The Commission approved the NASD's Designation Plan on January 7, 1982. Securities Exchange Act Release No. 18399 (January 7, 1982), 47 FR 2228. Generally, the Designation Plan provides: (1) Procedures for designation of NMS Securities; (2) procedures for determining substantial compliance with Tier 2 criteria established in the Rule; (3) procedures and criteria for determining or suspending the NMS status of securities; and (4) procedures for publishing lists of NMS Securities.

[3] *See* Securities Exchange Act Release No. 21583 (December 18, 1984), 50 FR 730.

[4] NMS Securities are automatically marginable pursuant to Regulation T under the Act. *See* Federal Reserve Docket R-0512 (August 30, 1984), 49 FR 35756.

[5] *See* Securities Exchange Act Release No. 21670 (January 17, 1985), 50 FR 3610 ("January Release").

[6] *See* Securities Exchange Act Release No. 22062 (May 28, 1985), 50 FR 23370.

[7] *See* Securities Exchange Act Release No. 22664 (November 26, 1985).

standard, in view of no comments being received and no apparent problems with the use of the revised NMS Securities maintenance criteria during the eight months the criteria were temporarily approved, the Commission has determined to approve the amendments to the Designation Plan on a permanent basis.

The Commission finds that approval of the amendments is necessary in the public interest, for the protection of investors or the maintenance of fair and orderly markets, and to remove impediments to, and perfect the mechanism of, a national market system or otherwise in furtherance of the purposes of the Act.

In accordance with the above, it is ordered, pursuant to Section 11A of the Act, and paragraph (d)(4) of Rule 11Aa2–1 thereunder, that the NASD's amendments to the Designation Plan be, and hereby are, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

John Wheeler,

Secretary.

[FR Doc. 85–28749 Filed 12–2–85; 8:45 am]

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[Release No. 34–22662; File No. SR–Amex–85–37]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Filing and Immediate Effectiveness of Proposed Rule Change

The American Stock Exchange, Inc. ("Amex") submitted on October 25, 1985, copies of a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1) and rule 19b–4 thereunder, to extend the Fixed Income Trading Permits ("FIP") program for three years and waive the FIP specialist fee for that time period.

I. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item II below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) In February 1982, the Exchange membership approved the FIP Plan and a Constitutional amendment which authorized the Exchange to offer 50 FIPs. A FIP holder is entitled to execute principal transactions in interest rate options, and he may also execute agency transactions if designated as a specialist. FIPs are renewable for three years at an annual fee of $10,000. Although FIP specialists were required to pay a $15,000 fee during the first year of the program, the specialist fee was waived by the Board for the second and third years. In August 1983, Article IV, section 1(h)(1) of the Exchange Constitution and the FIP Plan were amended to give the Board the discretion to extend the FIP program for an additional three years. The Board was also given the authority by the FIP Plan to waive or lower the $15,000 specialist fee during this added period.

In total, five FIPs were purchased by the end of the November 23, 1982 offering period. Three are currently in use. The three FIP holders have indicated interest in renewing the FIPs. To foster the growth of interest rate options trading, the Exchange has extended the FIP program for three years and waived the FIP specialist fee for that time period.

(2) *Basis:* The extension of the FIP program and waiver of the specialist fee is consistent with section 6(b) of the Act in general and section 6(b)(5) in particular in that it will broaden access to the Exchange's market in interest rate options and help perfect the mechanism of a free and open market.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange has determined that no burden on competition will be imposed by its extension of the FIP program and waiver of the FIP specialist fee for three years. On the contrary, the Exchange proposal will enhance competition among interest rate options market participants.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

II. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4 under the Act. At any time within 60 days of the filing of such proposed rule change, the Commission may sumarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interst, for the protection of investors, or otherwise in furtherance of the purposes of the act.

Publication of the submission is expected to be made in the Federal Register during the week of November 25, 1985. Interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of publication in the Federal Register. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Reference should be made to File No. SR–Amex–85–37.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of the filing and of any subsequent amendments also will be available at the principal office of the Amex.

For the Commission, by the Division of Market Regulations, pursuant to delegated authority.

Dated: November 25, 1985.

John Wheeler,

Secretary.

[FR Doc. 85–28750 Filed 12–2–85; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–22661; File No. SR–CBOE–85–43]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Filing and Immediate Effectiveness of Proposed Rule Change

The Chicago Board Options Exchange, Incorporated ("CBOE") submitted on

[8] 17 CFR 200.30–3(a)(37).

October 23, 1985, copies of a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1) and Rule 19b–4 thereunder, to codify a CBOE policy not to impose a transfer fee on the sale of an Exchange membership and not to remit to the selling member any interest earned while the proceeds of the sale are held by the Exchange pursuant to Rule 3.15.

I. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item II below and is set forth in sections (A), (B), and (C) below.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

The purpose of this proposed rule change is to codify for the purpose of clarity a procedure the Exchange always has followed. The statutory basis of the rule change is section 6(b)(4) of the Act, in that it provides for an equitable allocation of a reasonable charge.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will not have an impact on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor received.

II. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing change has become effective, pursuant to section 19(b)(3)(A) of the Act. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Publication of the submission is expected to be made in the **Federal Register**, during the week of November 25, 1985. Interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of publication in the **Federal Register**. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Reference should be made to File No. SR–CBOE–85–43.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of the filing and of any subsequent amendments also will be available at the principal office of the CBOE.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: November 25, 1985.

John Wheeler,

Secretary.

[FR Doc. 85–28751 Filed 12–2–85; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–22664; File No. SR–NASD–85–33]

Self-Regulatory Organizations; Proposed Rule Change by National Association of Securities Dealers, Inc., Adding Maintenance Criteria to the Criteria for Inclusion in the National List

Pursuant to section 19(b) of the Securities Exchange Act of 1934, 15 U.S.C. 78(b)(1), notice is hereby given that on November 25, 1985, the National Association of Securities Dealers, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed amendment to Part VII of Schedule D of the NASD's By-Laws adds maintenance critieria to the existing criteria for inclusion in the NASDAQ National List identical to the maintenance criteria contained in the NASDAQ/NMS Designation Plan filed with the Commission pursuant to SEC Rule 11Aa2–1.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item IV, below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C), below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Each day, quotations for those NASDAQ securities included in the National List are disseminated by the NASD to the news media. The financial criteria for inclusion in the National List are set forth in Part VII of Schedule D of the NASD's By-Laws. Part VII currently includes two alternative sets of criteria for initial inclusion, but does not provide for maintenance criteria. Rather, issuers' compliance with initial inclusion criteria is reviewed on a semiannual basis; issuers which fail to meet inclusion criteria are deleted from the National List.

The NASDAQ/NMS Designation Plan, filed with the Commission pursuant to SEC Rule 11Aa2–1, contains both initial inclusion and maintenance criteria. The proposed amendment to Schedule D will eliminate any inconsistency between the criteria for inclusion in the National List and the criteria under the NASDAQ/NMS Designation Plan by adding maintenance criteria to the National List identical to the maintenance criteria contained in the NASDAQ.NMS Designation Plan. The proposed maintenance criteria are as follows:

1. 200,000 Publicly Held Shares
2. Market Value of Publicly Shares of $2,000,000
3. Either Annual Net Income of $200,000 for the previous fiscal year or in two fo the last three fiscal years or Net Worth of at least $1,000,000.

The proposed rule change is consistent with section 11A(a)(1) of the Securities Exchange Act of 1934, which provides that "it is in the public interest and appropriate for the protection of

investors and the maintenance of fair and orderly markets" to assure "fair competition among brokers and dealers" and section 15A(b)(6), which requires the rules of registered securities associations to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of, a national market system, and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not anticipate that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of Proposed Rule Change and Timing for Commission Action

Within 30 days of the date of publication of this notice in the Federal Register or within such longer period (1) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By other approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the propsoed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552 will be available for inspection and copying in the Commission's Public Reference section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by December 24, 1985.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: November 26, 1985.

John Wheeler,

Secretary.

[FR Doc. 85-28752 Filed 12-2-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22667; File No. SR-PCC-85-10]

Self-Regulatory Organizations; Proposed Rule Change by Pacific Clearing Corp., Amending Its Fee Schedule To Include Charges for Underwriting Program Services

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on October 29, 1985, the Pacific Clearing Corporation ("PCC") filed with the Securities and Exchange Commission the proposed rule change as described below. The Commission is publishing this notice to solicit comments on the proposed rule change.

PCC and its affiliated securities depository, Pacific Securities Depository Trust Company ("PSDTC"), have developed a program to provide settlement and distribution services in connection with certain underwritings of PSDTC-eligible securities.[1] PCC is proposing to amend its fee schedule to include the following charge for "pick-up" services provided in connection with the underwriting program:

Underwriting

4Pick-up service $35.00 per $25 million market value

In its filing PCC states that the underwriting program is intended to facilitate securities underwritings, by expediting the issuance and distribution of securities, reducing the necessity for physical deliveries and encouraging the use of bookentry transfers of securities. PCC believes that its proposed fee for pick-up services in connection with the program should enable PCC to recover its costs for providing these services. PCC further believes that the proposed rule change is consistent with section 17A(b)(3)(D) of the Securities Exchange Act of 1934 ("Act"), in that it provides for the equitable allocation of reasonable dues, fees and other charges.

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the of the Securities Exchange Act of 1934.

Interested persons are invited to submit written data, views and arguments concerning the proposal. Persons making written submissions should file six copies with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of the filing will also be available for inspection and copying at the principal office of PCC. All submissions should refer to the file number in the caption above and should be submitted by December 24, 1985.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: November 26, 1985.

John Wheeler,

Secretary.

[FR Doc. 85-28753 Filed 12-2-85; 8:45 am]

BILLING CODE 8010-01-M

[1] *See* File No. SR-PCC-85-05, Securities Exchange Act Release No. 22400 (September 11, 1985) 50 FR 37939 (September 18, 1985). PCC is offering these services on a pilot basis pending final regulatory approval.

[Release No. 34-22668; File No. SR-PSDTC-85-11]

Self-Regulatory Organizations; Proposed Rule Change by Pacific Securities Depository Trust Co., Amending Its Fee Schedule To Include Charges for Underwriting Program Services

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby

given that on October 29, 1985, the Pacific Securities Depository Trust Company ("PSDTC") filed with the Securities and Exchange Commission the proposed rule change as described below. The Commission is publishing this notice to solicit comments on the proposed rule change.

PSDTC and its affiliated clearing corporation, Pacific Clearing Corporation ("PCC"), have developed a program to provide settlement and distribution services in connection with certain underwritings of PSDTC-eligible securities.[1] PSDTC is proposing to amend its fee schedule to include the following charges for distribution services provided in connection with the underwriting program:

Underwriting

- Distribution—$5 per $1 million market value
  —$5.00 per issue
  ($200.00 minimum; $2,000.00 maximum)
  All movement and passthrough charges apply.
- Money settlement

In its filing, PSDTC states that the underwriting program is intended to facilitate securities underwritings, by expediting the issuance and distribution of securities, reducing the necessity for physical deliveries and encouraging the use of book-entry transfers of securities. PSDTC believes that its proposed fee for pick-up services in connection with this program should enable PCC to recover its costs for providing these services. PSDTC further believes that the proposed rule change is consistent with section 17A(b)(3)(D) of the Securities Exchange Act of 1934, in that it provides for the equitable allocation of reasonable dues, fees and other charges.

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b–4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the proposes of the Act.

Interested persons are invited to submit written data, views and arguments concerning the proposal. Persons making written submissions should file six copies with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of the filing will also be available for inspection and copying at the principal office of PSDTC. All submissions should refer to the file number in the caption above and should be submitted by December 24, 1985.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: November 26, 1985.

John Wheeler,

Secretary.

[FR Doc. 85–28754 Filed 12–2–85; 8:45 am]

BILLING CODE 8010–01–M

[1] *See* File No. SR–PSDTC–85–07, Securities Exchange Act Release No. 22401 (September 11, 1985), 50 FR 37937 (September 19, 1985). PSDTC is offering these services on a pilot basis pending final regulatory approval.

[Release No. IC–14820; (File No. 811–4046)]

Federated Government Securities Trust; Application for an Order Declaring That Applicant Has Ceased To Be an Investment Company

November 26, 1985.

Notice is hereby given that Federated Government Securities Trust ("Applicant"), 421 Seventh Avenue, Pittsburgh, PA 15219, registered as an open-end, diversified, management investment company under the Investment Company Act of 1940 (the "Act"), filed an application on November 18, 1985, for an order pursuant to section 8(f) of the Act, declaring that Applicant has ceased to be an investment company. All interested persons are referred to the application on file with the Commission for a statement of the representations made therein, which are summarized below, and to the Act for the applicable provisions thereof.

Applicant states that it was organized on January 3, 1984, and that its registration statement was filed on March 9, 1984, but never became effective. Applicant further states that it has never made a public offering, has no securityholders and has retained no assets. Applicant represents that it is not a party to any litigation or administrative proceeding and does not intend to engage in any business activities other than those necessary to effectuate the winding up of its business and affairs. Finally, Applicant states that, pursuant to the approval of its Trustees, and in accordance with the laws of the Commonwealth of Massachusetts, it was dissolved and ceased to exist on August 30, 1985.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than December 20, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of the interest, the reasons for the request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85–28743 Filed 12–2–85; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–14813; (File No. 811–4465)]

First Investors Corporate Fund, Inc.; Application for an Order Declaring That Applicant Has Ceased To Be an Investment Company

November 26, 1985.

Notice is hereby given that First Investor Corporate Fund, Inc. ("Applicant"), 120 Wall Street, New York, NY 10005, registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified, management investment company, filed an application on October 15, 1985, for an order of the Commission, pursuant to section 8(f) of the Act, declaring that Applicant has ceased to be an investment company. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the applicable provisions thereof.

Applicant states that it is registered under the Act and filed a registration statement pursuant to section 8(b) of the

Act on September 27, 1984, has not more than 100 securityholders for purposes of section 3(c)(1) of the Act and rules thereunder, has never made a public offering of its securities, and does not propose to make a public offering or engage in business of any kind. Applicant further states that it does not have any securityholders or assets, that it is not a party to any litigation or administrative proceeding and does not intend to engage in any business activities other than those related to this application. Finally, the Applicant represents that it intends to maintain its corporate existence under Maryland state law.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than December 20, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-28744 Filed 12-2-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-23923; 70-7034]

Middle South Utilities, Inc.; Proposal To Enter Into Revolving Credit Agreement and for the Issuance and Sale of Unsecured Promissory Notes

November 26, 1985.

Middle South Utilities, Inc. ("MSU"), 225 Baronne Street, New Orleans, Louisiana 70112, a registered holding company, has filed a post-effective amendment to its declaration in this proceeding subject to sections 6(a) and 7 of the Public Utility Holding Company Act of 1935 and Rule 50(a)(2) thereunder.

On December 28, 1985 (HCAR No. 23553), MSU was authorized to enter into a revolving credit agreement ("Original Credit Agreement") providing for the issuance and sale by MSU of up to $71.5 million principal amount of its unsecured promissory notes to a group of commercial banks. The Original Credit Agreement expires, and the promissory notes ($25 million of which are currently outstanding) are due and payable on December 31, 1985.

MSU proposes to enter into an amendment of the Original Credit Agreement (the Original Credit Agreement as so amended is hereinafter referred to as the "Credit Agreement") to extend the term of the Credit Agreement, and the period during which MSU may effect borrowings from the banks thereunder, to no later than December 31, 1986. In addition, the terms of the Credit Agreement may reflect certain other amendments to the Original Credit Agreement, including the amendments of Schedule 1 thereto updating the list of "contingent liabilities" that MSU is expressly permitted to incur without obtaining the consents of the banks.

Under the terms of the Credit Agreement, MSU may effect borrowings and reborrowings through the period ending no later than December 31, 1986 by issuing to the participating banks its unsecured promissory notes payable upon expiration of the Credit Agreement ("Notes").

The Notes issued under the Credit Agreement will bear interest on their unpaid principal amount at a rate per annum which shall be no greater than the prime commercial loan rate of Manufacturers Hanover Trust Company (the "MHTC Rate") then in effect plus 2½%. Interest on the Notes will be payable quarterly in arrears on the first business day of each April, July, October and January, or upon payment of the unpaid principal amount thereof.

MSU will agree to pay to each participating bank a commitment fee for the period ending upon expiration of the Credit Agreement computed at the rate of ½ of 1% per annum on the average daily unused portion of the Commitments in effect during the period for which payment is made. Such commitment fee will be payable to each participating bank quarterly.

Based upon the MHTC Rate (9.50%) in effect as of November 18, 1985, the effective interest cost to MSU of the proposed borrowings as of that date would be 12.00% per annum.

Except as indicated above, the terms of the proposed borrowings by MSU will be substantially similar to those previously submitted to and approved by the Commission in this proceeding.

MSU presently intends to repay the Notes out of the proceeds of the sale of additional shares of its common stock, with the proceeds of other forms of financing approved by the Commission and/or with other funds that otherwise become available to MSU. The Notes will be prepayable at any time upon proper notice in whole or in part without premium.

The proceeds of borrowings by MSU under the Credit Agreement will be used by MSU to purchase additional common stock of its subsidiaries and for other lawful corporate purposes. The issuance and acquisition of such common stock will be the subject of separate filings with this Commission by MSU and the appropriate subsidiary.

The declaration and any amendments thereto is available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by December 20, 1985, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the declarant at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the declaration, as filed or as it may be amended, may be permitted to become effective.

For the Commission, by the Division of Investment Management pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-28745 Filed 12-2-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-14812; File No. 812-6097]

The National Mutual Life Association of Australasia Limited; Notice of Application

November 25, 1985.

Notice is hereby given that The National Mutual Life Assocation of Australasia Limited ("NML") and National Mutual Group Finance Ltd. ("Finance", and together with NML, the "Applicants"), c/o David O. Brownwood, Esq., Cravath Swaine & Moore, One Chase Manhattan Plaza, New York, New York 10005, filed an application on April 23, 1985, and amendments on October 29, 1985 and November 8, 1985, for an order pursuant to Section 6(c) of the Investment Company Act of 1940 ("Act") exempting them from all provisions of the Act. All interested persons are referred to the

application on file with the Commission for a statement of representations contained therein, which are summarized below, and to the Act for the complete text of the provisions referred to here in and in the application.

According to the application, NML, incorporated in Victoria, Australia, is the second largest life insurance office in Australia with total assets of $(US)5,108,600,000 and a net income of $(US)303 million as of September 30, 1984. As a company "limited by guarantee," it has no shareholders. However, NML's Articles of Association provide that its policy holders are to be member exercising powers and enjoying rights similar to those of shareholders in a company. Through subsidiaries, NML is presently involved in merchant banking, finance, unit trusts, portfolio mangement, investment advising, real estate development and authorized dealing in the short term money market.

According to the application, the Life Insurance Act 1945 of the Commonwealth of Australia (the "Life Insurance Act") extensively regulates the life insurance business of Australian life insurance offices both inside and outside Australia. A Life Insurance Commissioner ("Commissioner") is appointed pursuant to the provisions of the Life Insurance Act and is responsible for its administration. The Commissioner has wide supervisory and investigative powers, including the power to demand information that relates to any matter in connection with the business of the company or a subsidiary and a copy of any documents relating to such a matter. Applicants state that there are comprehensive accounting requirements for Australian life insurance companies. Acturial investigations are to be made at least every five years and reports are to be submitted to the Commissioner. The Life Insurance Act also contains extensive provisions relating to insurance policies. Also, according to Applicants, the Life Insurance Act requires that assets of a company used in life insurance portions of its business be kept in statutory funds, separate from all other assets of such company, and no mortgage, charge or lien can be given over any asset of a statutory fund except to secure a bank overdraft. Applicants state that no security has been given by NML to secure a bank overdraft. NML has established six statutory funds, each being distinguished by either the type or location of the life insurance business undertaken. The net value of the assets of each of the statutory funds and the composition of the assets of statutory funds, 1, 2 and 4 (the largest and for the purpose of this transaction the most important statutory funds) and of all statutory funds combined as at September 30, 1984 are set forth in the application.

The Applicants state that Finance has an issued share capital of A$300,000,000 (Australian Dollars) represented by 300,000,000 shares. NML is the beneficial owner of all the issued shares of Finance. Five shares have been fully paid A$3,000,004.95 and the balance has been paid to $0.01 (Australian). NML is liable to pay to Finance all or any portion of the unpaid capital of the issued shares whenever Finance calls or is deemed to call upon NML for such amounts. The five fully paid shares are held by custodian in trust for NML and the beneficial interest therein is held as an asset of its statutory fund No. 1. Applicants undertake that NML will hold the partly paid shares of Finance, throughout the term of the proposed transaction, as assets of three of its statutory funds, statutory funds Nos. 1, 2 and 4, in the percentage proportions of 60%, 10% and 30% respectively, and it will agree, so long as Commercial Paper (defined below) is outstanding or proposed to be issued, not to mortgage, pledge or in any way transfer or dispose of the shares or any interest in the shares at any time durng the term of the transaction described below. Furthermore, so long as Commercial Paper is outstanding or proposed to be issued, the application asserts that NML will undertake not to allow Finance to issue any other equity securities (other than to NML to be held as assets of its statutory funds).

The Applicants state that Finance proposes to issue commercial paper ("Commercial Paper") in the United States and other debt securities in the Euromarket ("Euronotes") up to $100 million (U.S. Dollars) in the aggregate, pursuant to a Global Note Facility Agreement (the "Facility Agreement"). The Applicants will undertake not to allow the total amount of Finance's Commercial Paper, Euronotes and other indebtedness outstanding at any time so long as Commercial Paper is outstanding or proposed to be issued, to exceed the aggregate of the amount of unpaid capital on the shares of Finance held by NML, any amount held by the Escrow Agent as described below and any amount called on shares in Finance and paid by NML for the purpose of meeting a payment on Commercial Paper or Euronotes (which payment has not been effected by Finance). The proceeds from any borrowings in the United States or abroad will either be lent to NML to be carried to and become assets of statutory funds Nos. 1, 2 and 4 or to its subsidiaries. The Applicants state that the terms, including maturities and principal amounts, of the obligation of NML or one of its subsidiaries to repay funds lent to it by Finance will be structured so that if funds are not available on the maturity date from new issues of Commercial Paper or Euronotes, repayment of maturing Commercial Pape will be funded by repayment to Finance by NML or a subsidiary (under certain limited circumstances described in the application.)

The applicants state that the purpose of the transaction is to provide a source of low-cost funds for the business of NML and its subsidiaries including those aspects of NML's business operated through statutory funds Nos. 1, 2 and 4 or through assets of such funds. It is represented that the proposed structure for this funding whereby a wholly owned finance subsidiary, issued shares which are partly paid, issues Commercial Paper and lends the proceeds to NML to be assets of the three funds, or to subsidiaries, shares in which are assets of those funds, is dictated by the requirements of Australian insurance law. The applicants state that, according to Australian counsel to NML and Finance, if NML were to issue Commercial Paper or unconditionally guarantee payment of Finance's Commercial Paper, amounts raised may not necessarily be able to be carried to the statutory funds and the assets of those funds may not be available to be used to pay the Commercial Paper on maturity. The funds so raised may not be considered to be in respect of, or applied for, the purposes of the class of life insurance business of any statutory fund receiving such funds, and repayments of the Commercial Paper out of statutory funds might be viewed as using assets reserved to pay insurance obligations to satisfy non-insurance liabilities.

The Applicants undertake that the shares of Finance, so long as Commercial Paper is outstanding or proposed to be issued, will be held by NML as assets of statutory funds, 1, 2 and 4 and other assets of each of those statutory funds will be available to meet a liabiliity, in proportion to that statutory fund's "shareholdering", for the remaining unpaid capital on the shares of Finance. When Finance is in need of any portion of the unpaid capital, it may make a call on NML for payment in proportion to the number of shares of Finance held as assets of each statutory fund. Although in most

instances such a call is made by the board of directors on behalf of the company, the Facility Agreement will provide that in the event of default, in payment of any Commercial Paper at maurity, a U.S. branch or agency of a foreign commercial bank or a U.S. commercial bank acting as issuing and paying agent for the Commercial Paper (the "Depositary"), acting on behalf of the holders of outstanding Commercial Paper, will be required to notify Credit Suisse First Boston Ltd. (the "Facility Agent") which, in turn, will be required to demand that NML pay an escrow agent (the "Escrow Agent") an amount equal to the outstanding principal amount of Commercial Paper, Euronotes and other indebtedness of Finance. This demand by the Facility Agent will constitute a deemed call by the board of directors on Finance on the unpaid capital of the shares held as assets of the statutory funds without any formal action by the Finance board being taken. The Applicants state that the Articles of Association of Finance provide that the directors may on the issue of shares deem the balance of any nominal amount unpaid on allotment to be payable only on the occurrence of certain specified events. Where such an event occurs and NML fails to pay the amount called, the Directors have no power to forfeit the shares while the balance remains unpaid or to revoke or postpone the deemed call. The application for the partly paid shares contains a condition that an amount will be deemed to have been called if the Facility Agent demands payment of a specified sum which it can do in the notice of declaration of an event of default. The Depositary will give such notice to the Facility Agent, and the Facility Agent will make such demand to NML, without instruction from any holder of Commercial Paper in the event of a default in payment of any Commercial Paper at maturity. Neither will have any discretion on the matter. The amount paid to the Escrow Agent will be held to pay indebtedness of Finance as it comes due, including all Commercial Paper. It is further represented that a United States branch or agency of a foreign bank or a United States commercial bank will serve as Escrow Agent.

The Applicants state that the amount of unpaid capital on the shares of Finance and the ability of NML to meet the calls is critical to the effective operation of this structure. As of the date of filing of the application there was approximately $297,000,000 of unpaid capital on the shares of Finance, approximately $(US)210,514,000 at the exchange rate on March 28, 1985. As of September 30, 1984, the aggragate value of the assets of statutory funds Nos. 1, 2 and 4 was $A5,590,100,000 approximately $(US)3,962,262,880 at exchange rates on March 28, 1985. The Applicants state that Finance may engage in other activities to procure funds for NML or its subsidiaries, including borrowing funds or raising funds by issuing debentures, bonds, notes or other securities. However, its payment obligations under the Commercial Paper and the Euronotes constitute direct unconditional unsecured and general obligations at all times ranking pari passu with all other unsecured and general obligations (other than statutory preferred obligations). The Articles of Association of Finance do not permit the Directors of Finance to charge uncalled capital of Finance.

The Applicants undertake to ensure that so long as Commercial Paper is outstanding or proposed to be issued, Finance will maintain at all times a ratio of Shareholders Equity to Total Liabilities, both as defined in the Facilities Agreement, of 1.5 to 1. The Applicants state the result of the proposed transaction is that there should always be an amount of unpaid capital on Finance shares at least equal to the total amount of Finance's indebtedness, and NML (from the assets of statutory funds Nos. 1, 2 and 4) should be the entity required to pay if called upon to do so.

The Applicants state that the Commercial Paper will be exempt from registration under the Securities Act of 1933 (the "Securities Act") pursuant to section 3(a)(3) thereof. Finance undertakes not to market any Commercial Paper prior to receiving an opinion of United States counsel to the effect that the proposed offering is exempt from the registration requirements of the Securities Act. Finance does not intend to proceed with the issue of Commercial Paper unless the paper has received prior to issue one of the two highest investment grades from at least one nationally recognized rating agency.

The Applicants represent that each of them will appoint a corporate entity which acts in such capacity to accept service of process in any State or Federal court in the United States by any holder of Commercial Paper against NML or Finance based on a Commercial Paper Note. NML and Finance will expressly accept the jurisdiction of any State or Federal court in the Borough of Manhattan and the City and State of New York in respect of any such action. Such appointment of an authorized agent to accept service of process and such consent to jurisdiction will be irrevocable until all amounts due and to become due in respect to the Commercial Paper Notes shall have been paid. NML and Finance will also be subject to suit in any other court in the United States which would have jurisdiction because of the manner of the offering of the Commercial Paper or otherwise.

The Applicants undertake to ensure that the Commercial Paper will not be offered for sale to the general public, but instead will be sold through one or more commercial paper dealers to institutional investors and other sophisticated entities and investors of the type which ordinarily purchase commercial paper notes. NML and Finance undertake to ensure that each dealer in the Commercial Paper will, at or prior to any sale to an offeree of the Commercial Paper, provide to such offeree a memorandum describing the respective businesses of NML and Finance and including financial information regarding NML and Finance. The memorandum will fully describe NML's liability to pay unpaid capital on the shares of Finance, the access this arrangement provides to the statutory funds and how this arrangement provides the functional equivalent of a guarantee by NML. The memorandum will include a description of any material differences between the accounting principles applied in the preparation of the financial statements of NML and Finance and generally accepted accounting principles applicable to similar companies in the United States. Such memorandum will be at least as comprehensive as those customarily used in offering commercial paper notes in the United States and will be updated from time to time to reflect material changes in the respective business and financial status of NML and Finance. NML and Finance consent to having an order granting the relief requested under section 6(c) of the Act expressly conditioned upon its compliance with the undertakings regarding disclosure memorandum.

The Applicants state that NML is primarily engaged in the life insurance business. If NML were deemed to be an investment company, it would only be by virtue of the fact that, at any point in time, the value of investment securities it holds or owns might exceed 40 percent of the value of its total assets on an unconsolidated basis, thereby placing it within the definition of an investment company in section 3(a)(3) of the Act. Furthermore, because NML is not an insurance company regulated by a state

or territory of the United States (sections 2(a)(17) and 2(a)(39) of the Act), the insurance company exemption of section 3(c)(3) of the Act is not available to it. Finance may also be deemed to be an "investment company" as defined in the Act because (i) its major assets will be its contractual rights to require NML or a subsidiary of NML to repay the proceeds of the sale of Commercial Paper which it may loan to NML or a subsidiary of NML, and such rights may be deemed to be securities under section 2(a)(36) of the Act.

The Applicants state that the business of NML is substantially the same as the business of any United States insurance company, and Australian insurance regulations, like state regulations in the United States, provides sufficient control over the financial practices of NML to protect investors adequately.

The Applicants state that Finance is entitled to an exemption from the provisions of the Act because it is necessary and appropriate in the public interest and consistent with the policies of the Act and the protection of investors.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than December 18, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon Applicants at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

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[Release No. IC-14814; File No. 812-6190]

Proven Properties, Inc.; Notice of Application for Order Granting Exemption From All Provisions of the Act

November 26, 1985.

Notice is hereby given that Proven Properties, Inc. ("Applicant"), Pennzoil Place, P.O. Box 2049, Houston, TX 77252-2049, filed an application on September 20, 1985, for an order, pursuant to section 6(c) of the Investment Company Act of 1940 (the "Act"), exempting the Applicant from all provisions of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for a statement of relevant provisions thereof.

Applicant, a Delaware corporation, states that it was organized in 1983 by Pennzoil Company ("Pennzoil") and a group of institutional and other sophisticated private investors (the "Investors") for the purpose of acquiring and producing oil and gas properties. Applicant states that at the time of its initial capitalization, Pennzoil acquired 497,000 shares (48.73%) of Applicant's Class A voting common stock ("Class A Stock") and 247,506 shares of Applicant's Class B non-voting common stock ("Class B Stock"), in exchange for 5,916,667 shares of Pennzoil Preference Common Stock ("Preference Common Stock"). Applicant represents that the Investors acquired 523,000 shares (51.27%) of Applicant's Class A Stock and 260,454 shares of its Class B Stock in exchange for an aggregate cash investment of $261,500,000. The Investors' Class B Stock is reserved for issuance upon conversion of Applicant's outstanding zero coupon convertible notes in the face amount of $175,098,000 maturing August 31, 1989 ("Zero Coupon Notes"). Applicant further represents that on a basis assuming full conversion of the Zero Coupon Notes, Applicant's Class A Stock and Class B Stock each would be owned (48.73%) by Pennzoil and (51.27%) by the Investors. Applicant used the $261,500,000 of proceeds from the sale of Class A Stock and Zero Coupon Notes to the Investors to purchase from Pennzoil 6,266,190 additional shares of Preference Common Stock, resulting in the current ownership by Applicant of a total of 12,142,857 shares of the Preference Common Stock (constituting all of the issued and outstanding shares of the class).

According to the application, Applicant and Pennzoil have entered into an operations agreement under which Pennzoil furnishes certain administrative and technical services to Applicant in connection with selecting investments in oil and gas properties and in managing its oil and gas properties, other assets, and business activities, in return for payment by Applicant of a management fee. Applicant states that under the operations agreement, Applicant and Pennzoil each has the opportunity to participate in certain investments in properties proposed to be acquired by the other. Applicant further states that the agreement between Pennzoil and the Investors under which the Applicant was originally capitalized contains provisions whereby at certain times in 1988 and 1989 either Pennzoil or the Investors may elect to have Pennzoil acquire the Investors' equity interest in the Applicant.

Applicant asserts that to date it has expendd approximately $92.7 million for the acquisition and production of oil and gas properties. Thus, according to Applicant, the investment in the Preference Common Stock currently represents in excess of 40 percent of Applicant's total assets thereby bringing it within the definition of an investment company under section 3(a)(3) of the Act. Applicant expects, however, that as additional properties are acquired, the percentage of Applicant's total assets represented by the Preference Common Stock will eventually decline below 40 percent.

In order to provide debt financing for its operations, Applicant represents that it currently issues and sells through private placement its unsecured commercial paper notes (the "Notes"). Applicant states that as of September 11, 1985, $32.7 million of Applicant's Notes were outstanding. Applicant further represents that the Notes are exempt from the registration requirements of the Securities Act of 1933 (the "Securities Act") by virtue of section 3(a)(2) thereof, because they are covered by an irrevocable letter of credit issued by a national bank and are therefore "guaranteed by a bank" within the meaning of section 3(a)(2) of the Securities Act. Applicant states that the Notes are issued in denominations of not less than $200,000, have a maturity date not exceeding nine months, and are neither payable on demand prior to maturity nor eligible for any extension, renewal or automatic "rollover."

Applicant represents that prior to sale, each purchaser of the Notes will be furnished with a memorandum which briefly describes the Notes, use of proceeds, business of Applicant, summary financial information, and other pertinent information. Applicant further represents that these disclosures will be at least as comprehensive as

similar documents provided by other issuers who sell commercial paper to the public. Applicant undertakes that at the time the Notes are issued, the exemption afforded by section 3(a)(2) under the Securities Act will be available to their offer and sale and the Notes will be rated in one of the two highest investment grade ratings from at least one nationally recognized statistical rating organization.

According to the application, pursuant to a repayment agreement between Applicant and Mellon Bank, N.A. (the "Credit Bank"), the Notes are supported by an irrevocable letter of credit issued by the Credit Bank in favor of the Depositary (defined below) for the benefit of the holders of the Notes. Applicant states that another commercial bank (the "Depositary) has been appointed (under a Depositary agreement between Applicant and the Depositary to which the Credit Bank has consented) to act as depositary, authenticating and paying agent on behalf of the Applicant and as trust beneficiary for the benefit of the holders of the Notes. Applicant states that currently, the maximum amount available under the letter or credit (and, therefore, the maximum amount of Commercial Paper Notes that can be outstanding) is $100,000,000. Applicant represents that the credit Bank ranked as the eleventh and fifteenth largest commercial bank in the United States as of December 31, 1984, in terms of total assets and deposits, respectively.

Applicant submits that the Notes are being issued and sold through a "private placement" pursuant to the requirements of section 4(2) of the Securities Act. Applicant further submits that unless and until the exemptive order requested herein is issued, Applicant's outstanding securities (other than short-term paper) will be beneficially owned by not more than one hundred persons and the Applicant will not make a public offering of any of its securities. Consequently, Applicant states that it is currently excluded from the definition of investment company by section 3(c)(1) of the Act.

Applicant states that following issuance of the exemptive order requested by Applicant it would expect to offer the Notes through one or more commercial paper dealers under circumstances that might be deemed to constitute a public offering (albeit an offering of exempt securities under section 3(a)(2) of the Securities Act). According to Applicant, purchasers would no longer be limited to "accredited investors" within the meaning of Regulaiton D under the Securities Act, although it would remain the case that the Notes would be issued only to the types of sophisticated and largely institutional investors that ordinarily participate in the commercial paper market and that the Notes would not be advertised or otherwise offered for sale to the general public. Additionally, Applicant believes that it would no longer be excluded from the definition of an investment company set forth in section 3(c)(1) of the Act because the issuance of the Notes might be deemed to constitute a public offering and, thus, requests an exemption from all provisions of the Act.

Applicant asserts that the exemption requested is both necessary and appropriate in the public interest and is consistent with the purposes fairly intended by the policy and provisions of the Act. Applicant also asserts that as a corporation established by Pennzoil and the Investors, Applicant's operations do not lend themselves to the abuses against that which the Act was directed to prevent. If the exemption is granted, as a condition thereof, Applicant undertakes that as long as the Preference Common Stock remains more than 40 percent of the value of its total assets, Applicant will make no public offering of its securities except for the offering described in the application.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than December 20, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon Applicants at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

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BILLING CODE 8010-01-M

[Release No. IC-14819; File No. 813-68]

Prudential Employees Limited Partnership—1986; Application for an Order Granting Exemptions for Employees' Securities Company and Granting Confidential Treatment to Certain Filings

November 26, 1985.

Notice is hereby given that Prudential Employees Limited Partnership—1986 (formerly, Prudential Employees Limited Partnership—1985) ("Applicant"), a closed-end, non-diversified management investment company at 5231 South Quebec Street, Suite 200, Englewood, Colorado 80111, The Prudential Insurance Company of America ("Prudential"), Asset Management Group ("AMG"), Asset Management Group Investment Corp. ("AMGIC"), Earl L. Wright and Michael D. Bergmann, filed an application on May 23, 1985, and amendments thereto on October 7 and November 20, 1985, for an order pursuant to section 6(c) of the Investment Company Act of 1940 (the "Act") exempting Applicant from the provisions of sections 2(a)(13) and 6(b) of the Act to permit Applicant to be treated as an "employees' security company", and pursuant to section 6(b) of the Act, for an order exempting Applicant from sections 8(b), 10(a), 10(b)(1), 10 (b)(2), 10(b)(3), 10(f), 14(a), 15(a), 15(c), 16(a), 17(a)(1), 17(d), 17(f), 17(g), 18(a)(1), 18(i), 19(b), 20(a), 30(a), 30(b), 30(d), and 32 of the Act and from Rules 8b-16, 17d-1, 17g-1, and 19b-1(b) thereunder. Applicant also requests an order pursuant to section 45(a) of the Act granting confidential treatment to all filings made by the Applicant under section 30 of the Act or in lieu of the requirements thereof. The request for exemptions and confidential treatment are sought with respect to Applicant and future annual limited partnership created and sponsored by Prudential, the structure and operation of which will be identical to Applicant in all material respects. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act and the rules thereunder for the applicable provisions thereof.

Applicant states that it was formed by Prudential as a limited partnership pursuant to Colorado law to provide tax-advantaged investment opportunities to active and retired employees and insurance agents of Prudential and its subsidiaries. Applicant proposes to offer limited partnership interests to be sold only to such employees and agents who,

together with his or her spouse, have either (i) a net worth of $225,000 or more (exclusive of home, home furnishings, and automobiles) without regard to investment in Applicant, or (ii) a net worth of $60,000 or more (exclusive of home, home furnishings, and automobiles) and actual and anticipated taxable incomes for the tax years ending in 1985, 1986, 1987 and 1988, of $60,000 or more, without regard to investment in Applicant. Applicant represents that it will require investors to certify, among other things, that they expect to be in a marginal federal income tax bracket of at least 33% (36% in the case of an investment of $30,000 or more) in 1986, 1987 and 1988 and that the proposed investment in Applicant does not exceed ten percent of his or her net worth. Applicant states that the minimum investment will be $5,000 and that no investment will be accepted after the close of the Applicant's initial (and only) offering of its limited partnership interests. In light of these and other eligibility requirements, Applicant expects that fewer than 1,500 individuals will be eligible to invest.

Applicant states that its General Partners are Asset Management Group Investment Corp. ("AMGIC"), and Earl L. Wright and Michael D. Bergmann, who together with their spouses own AMGIC through a holding company, that Messrs. Wright and Bergmann are AMGIC's only executive officers and directors, and that the General Partners agreed to serve at Prudential's request. Applicant further states states that the General Partners will make a combined cash contribution of one percent of Applicant's total capital and that Messrs. Wright and Bergmann will be paid for their services as General Partners at their usual hourly billing rates, while AMGIC will be paid at the usual hourly billing rates of those persons who perform services for Aplicant on AMGIC's behalf. Applicant also states that the General Partners will be reimbursed for the actual costs and expenses they incur in attending to Applicant's business and that Prudential will monitor the General Partners' charges and expenses.

Applicant represents that the General Partners must be approved by a vote of a majority in interest of the limited partners within 60 days of the closing of the offering of its limited partnership interests, and that by such vote any one or more of the General Partners may be removed at any time with or without cause. According to the application, no person may become a General Partner without Prudential's consent, unless elected by a vote of a majority in interest of the limited partners.

Applicant states that its investment portfolio will be managed by AMG, a California corporation controlled by Messrs. Wright and Bergmann that is registered as an investment adviser under the Investment Advisers Act of 1940. Applicant states that its advisory agreement with AMG was negotiated by Prudential and that such agreement will subsequently be submitted to the limited partners for approval. Applicant further states that AMG will make its investment decisions on a discretionary basis, subject to Applicant's investment objective of obtaining long-term capital appreciation through speculative investments that provide tax advantages. No investment may be made on Applicant's behalf, however, unless Prudential has first determined that such investment will not conflict with Prudential's interests and no change may be made in the investment advisory contract without Prudential's approval or the vote of a majority in interest of the limited partners. The limited partners may by a similar vote also disapprove a change in the investment advisory agreement approved by Prudential, in which event the change will not be made. The investment advisory agreement may be terminated by Prudential, or by the vote of a majority in interest of the limited partners, at any time upon 60 days' notice to AMG and Applicant, and a majority in interest of the limited partners may disapprove such a termination by Prudential.

Prudential will pay all legal fees and other costs and expenses incurred in connection with organizing Applicant, including, without limitation, the preparation of the Agreement of Limited Partnership, the subscription agreement and the investment advisory agreement; registration of the Applicant and its limited partnership interests with the Commission; preparation of the application for exemption from the Act; and preparation of a legal opinion regarding the tax consequences of investment in Applicant. Also, Prudential may provide some administrative services and facilities to Applicant on an on-going basis, without charge.

Applicant seeks an exemption pursuant to section 6(c) of the Act from the provisions of sections 2(a)(13) and 6(b) of the Act to the extent necessary for it to be treated as an "employees' securities company" in order to permit retired so-called "ordinary agents" of Prudential (and members of their immediate families) to purchase Applicant's securities. According to the application, approximately 4,500 of Prudential's agents are such ordinary agents who, while employees for many purposes and clearly at least "persons on retainer", are not employees for tax and certain other purposes. Ordinary agents do participate in the benefit programs made available to Prudential employees, including retirement, major medical, disability, savings plan, dental and group life insurance programs. Their compensation is reported to the Internal Revenue Service on form 1099 rather than on Form W–2 and federal income tax is not withheld. Ordinary agents sell Prudential products on essentially the same basis as district agents and report to agency managers and, in turn, to ordinary Agencies Department executives, who are all employees of Prudential. Consequently, Applicant asserts that such agents, even after retirement, do share a community of interest with Prudential employees and should be treated as "employees" for purposes of section 2(a)(13) of the Act.

Applicant also requests an order pursuant to section 6(b) of the Act exempting Applicant and other persons acting in connection with its activities as an employees' securities company from the following provisions of the Act and the rules and regulations thereunder:

Section 8(b) and Rule 8b–16. Applicant asserts that requiring it to file with the Commission annual amendments to its registration statement under Rule 8b–16 would be unduly burdensome and unnecessary because it is a closed-end company that will have only one offering of limited partnership interests for which there will be no public market, and the limited partners will receive annual reports and accountings.

Section 10(a). Applicant requests an exemption from section 10(a) to permit it to be structured as a limited partnership, and to permit it to be managed by the General Partners who are "interested persons" for purposes of section 10(a).

Section 10(b)(1). Applicant requests an exemption from section 10(b)(1) to allow a broker/dealer affiliated with AMG and, hence, the General Partners, to act, without charge, as a broker for Applicant's proposed investments.

Section 10(b)(2). Applicant requests an exemption from section 10(b)(2) to permit it to employ registered broker/dealers affiliated with the General Partners or with Prudential to act, without charge, as underwriters for its limited partnership interests.

Section 10(b)(3). Because the General Partners, AMG and AMG's affiliates might be considered directors or officers and because they might be said to be

engaged in the activities of investment bankers Applicant requests an exemption from section 10(b)(3) to the extent that it would otherwise bar them from organizing and participating in ventures of the kind in which Applicant invests and from underwriting securities issued by such ventures. Applicant also requests an exemption from section 10(b)(3) to permit it to function as described in the application even if Prudential were deemed a director or officer of Applicant and Prudential or any of its affiliated persons were deemed an investment banker.

Section 10(f). Applicant requests an exemption from section 10(f) to permit it to acquire securities principally underwritten by AMG or affiliated persons of AMG. Applicant represents that it will comply with the provisions of subparagraphs (b), (h) (except that Prudential shall perform the functions required of the directors by subparagraph (h)), and (i) of Rule 10f-3, and that if the Commission requires Applicant to make any annual filings, Applicant will include therein the information contemplted by subparagraph (g) of Rule 10f-3.

Section 14(a). Applicant requests an exemption from section 14(a) to permit it to offer limited partnership interests before it has a net worth of $100,000. Applicant states that because it has set $500,000 as the minimum figure below which it will not operate and that investors' funds will be held in escrow until such amount has been received, the protections sought to be achieved by section 14(a) are assured.

Sections 15(a) and 15(c). Applicant requests an exemption from section 5(a) (i) to permit Prudential alone to approve the initial investment advisory contract with AMG, including approval of all terms of such contract and any renewal thereof, subject to a subsequent vote of the limited partners, (ii) to permit changes in the investment advisory contract to be made with the approval of either Prudential (subject to repudiation by a majority in interest of the limited partners) or a majority in interest of the limited partners, and (iii) to permit the contract to be terminated without penalty by either Prudential (subject to repudiation by a majority in interest of the limited partners) or a majority in interest of the limited partners. Applicant agrees as a condition to these exemptions to withhold the payment of any compensation to the investment adviser under the investment advisory contract until a majority in interest of the limited partners approve such contract, at which time compensation will be paid retroactively to the date of the contract.

Section 16(a). Applicant requests an exemption from section 16(a) to permit the General Partners to manage Applicant's business, subject to subsequent approval by the limited partners. As a condition to this exemption, Applicant agrees to withhold the General Partners' compensation until they are approved by a majority in interest of the limited partners, at which time compensation will be paid retroactively to the date of the agreement with the General Partners.

Sections 17(a)(1), 17(d) and the Rule 17d-1. Applicant states that because the General Partners, AMG, or affiliated persons thereof (the "AMG Entities") may serve as the general partners for the operating ventures in which Applicant may invest, and such ventures may therefore be regarded as their affiliates, such investments might not be permissible under section 17(a)(1) without prior approval of the Commission under section 17(b). Similarly, Applicant states that such operating venture might be deemed a "joint enterprise or other joint arrangement" between Applicant and the AMG Entities for which prior approval under Rule 17d-1 would be required. Moreover, an investment in an operating venture by Applicant and another Prudential employees limited partnership organized under the terms and conditions of the application might be deemed to require prior approval of the Commission. Applicant asserts that obtaining prior Commission approval of such transactions is not feasible because AMG organizes such operating ventures to take timely advantage of specific investment opportunities, and the formation of the oprating venture must be rapidly consummated once the investment opportunity arises. Accordingly, Appicant, AMG and the General Parners seek exemptive relief from the provisions of sections 17(a)(1) and 17(d), and Rule 17d-1 thereunder to permit Applicant, the AMG entities, or other subsequent Prudential employees limited partnerships, to invest in limited partnerships in the following cirumstances:

(a) Applicant and other Prudential employees limited partnerships organized under the terms of the application may invest together in limited partnerships if each participates on the same terms and conditions, but the amount of the equity interest of each may vary.

(b) The only other interest of any AMG Entities in any such partnership shall be as a general partner, with the general partnership interest of all of the AMG Entities limited to one percent of the total partnership equity of any single partnership.

(c) The AMG Entities shall be entitled to receive fees (at their usual hourly rates) and expenses for services performed for such partnerships.

(d) Other than distributions for their proportional equity interest in such partnerships, and the fees and expenses for services performed, the AMG Entities shall receive no other compensation from such partnerships.

Applicant, Prudential, AMG and the General Partners agree to comply with the following conditions with respect to the exemptive relief sought from the provisions of sections 17(a)(1) and 17(d) and Rule 17d-1:

(a) Prudential shall examine the terms of Applicant's proposed participation in any limited partnership in which the AMG Entities also participate and shall approve the proposed investment by Applicant only after it determines that the terms of the proposed investment are reasonable and fair and do not involve overreaching on the part of any person concerned and, that the basis upon which Applicant will participate is not less advantageous than the basis on which the AMG Entities will participate. If Prudential does not approve any such proposed investment, Applicant shall not make the investment.

(b) Applicant shall disclose Prudential's role in the prospectus and shall further disclose in the prospectus that such role does not constitute an endorsement or approval by Prudential of the investment merits of any investment made by Applicant with the AMG Entities.

(c) Prudential shall determine whether the services performed by the AMG Entities are necessary and approprite and whether the fees and expenses charged for those services are fair and reasonable and do not involve overreaching on the part of any person concerned. In the event that Prudential determines that any such fees or expenses shall be disallowed, the AMG Entities shall not charge the partnership for such fees or expenses.

(d) In connection with Prudential's obligations under (a) and (c) above, Applicant and Prudential shall comply with the provisions of section 57(h) of the Act by adopting and updating procedures to assure that reasonable inquiry is made into the transactions which Prudential must examine under (a) and (c) above.

(e) In connection with its obligations under (a) and (c) above, Prudential shall

comply with the provisions of section 57(f)(3) of the Act.

(f) The AMG Entities shall not dispose of their interest in any limited partnership in which Applicant also participates unless Applicant has the opportunity to dispose of its interest on the same terms. The AMG Entities shall give Prudential reasonable notice of any such proposed disposition and, in the event that Prudential determines that Applicant should also dispose of its interest, Applicant shall do so.

Section 17(f). Applicant requests an exemption from section 17(f) in order to place and maintain its securities and similar investments in the custody of Prudential without charge. Applicant and Prudential agree as a condition to this exemption, that Applicant's securities and similar investments held in Prudential's custody shall be held by Prudential in accordance with Rule 17f–1 under the Act.

Section 17(g) and Rule 17g–1. Because its organization does not include disinterested directors or officers, Applicant requests an exemption from the provisions of Rule 17g–1 that require certain actions to be taken by persons who are not "interested persons". Applicant intends to purchase a fidelity bond sufficient to satisfy the requirements of Rule 17g–1 and Prudential, an "interested person", will approve the bond and the premium paid for it. In addition, because the Applicant has no officers, it cannot comply literally with the requirements of subsection (h) of the Rule that a registered management investment company must designate an officer to make the filings and give the notices required by Rule 17g–1(g). Instead, Applicant proposes to designate one of its General Partners to perform those functions. Accordingly, Applicant requests an exemption from these particular requirements of Rule 17g–1 and states that it will comply with the remaining provisions of the rule.

Section 18(a)(1). Applicant seeks an exemption from section 18(a)(1) to permit it (a) to make non-recourse borrowings without compliance with the asset coverage, voting and default requirements of section 18(a)(1), for the purpose of acquiring real property or other interests that are not securities, and (b) to disregard liabilities and indebtedness arising from such borrowings in computing its asset coverage with respect to any class of senior debt securities that is not comprised of such borrowings. Applicant asserts that compliance with the requirements of section 18(a)(1) would materially impair its ability to enter into real estate and similar transactions on a basis that is attractive from a tax standpoint. Applicant submits that investors in Applicant do not require the protections of section 18(a)(1) with respect to such non-recourse borrowings because the lenders would be precluded from looking beyond the real estate or other property securing the indebtedness to Applicant's general assets to obtain repayment for such borrowings.

Section 18(i). Applicant requests an exemption from section 18(i) to permit the issuance of limited partnership interests with the voting rights provided by the limited partnership agreement.

Section 19(b) and Rule 19b–1. Applicant requests an exemption from section 19(b) and Rule 19b–1(b) to permit it to distribute the proceeds of its investments, a part of which could reflect long-term capital gains, more frequently than once every twelve months.

Section 20(a). Applicant asserts that the proxy rules for the most part do not apply to its proposed operations. Accordingly, Applicant requests an exemption from section 20(a) and agrees, as a condition to such exemption, that whenever the limited partners are called upon to attend a meeting or give their proxy in connection with a vote on any matter, they will be provided with all the information that would be required under section 20(a).

Sections 30(a), 30(b), and 30(d). Applicant seeks exemption from sections 30(a), 30(b), and 30(d) to exempt it from the requirements relating to the filing of quarterly and annual reports with the Commission under sections 30(a), 30(b), and 30(d), and to permit it instead to provide annual reports to the limited partners. Applicant believes that such annual reports will provide the limited partners with full disclosure in a manner that does not hinder Applicant with excessive and burdensome administrative costs.

Applicant also requests that any filings made with the Commission under section 30 or in lieu thereof be afforded confidential treatment under section 45(a) of the Act. Applicant requests such confidential treatment on the ground that the investments Applicant will be making and information relating to such investments are not generally available to the public and that the only persons legitimately entitled to such information are the limited partners involved, who will have it sent directly to them.

Section 32. Applicant states that it cannot comply with the provisions of section 32 because it has no directors or voting shareholders, and the General Partners will all be interested persons of the Applicant. Hence, Applicant requests an exemption from section 32(a) to permit Prudential to select Applicant's independent certified public accountants.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than December 20, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon an Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Disivion of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85–28748 Filed 12–2–85; 8:45 am]

BILLING CODE 8010–01–M

TENNESSEE VALLEY AUTHORITY

Forms Under Review by the Office of Management and Budget

AGENCY: Tennessee Valley Authority.

ACTION: Forms under review by the Office of Management and Budget.

SUMMARY: The Tennessee Valley Authority (TVA) has sent to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

Requests for information, including copies of the forms proposed and supporting documentation, should be directed to the Agency Clearance Officer whose name, address, and telephone number appear below. Questions or comments should be directed to the Agency Clearance Officer and also to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC. 20503; Attention: Desk Officer for Tennessee Valley Authority, 395–7313.

Agency Clearance Officer: Mark R. Winter, Tennessee Valley Authority, 100 Lupton Building, Chattanooga, TN 37401; (615) 751–2524, FTS 858–2524.

Type of Request: Regular Submission.

Title of Information Collection: TVA Energy Saver Home Inspection Sheet.

Frequency of Use: On Occasion.

Type of Affected Public: Businesses or other for-profit, small businesses or organizations.

Small Businesses or Organizations Affected: Yes.

Federal Budget Functional Category Code: 271.

Estimated Number of Annual Responses: 5,000.

Estimated Total Annual Burden Hours: 2,400.

Need For and Use of Information:

This information collection is an integral part of the TVA Energy Saver Home Program which promotes energy-efficient standards for new homes and certifies those new homes which meet the standards.

Dated: November 25, 1985.

John W. Thompson,

Manager of Corporate Services, Senior Agency Official.

[FR Doc. 85-28671 Filed 12-2-85; 8:45 am]

BILLING CODE 8120-01-M

DEPARTMENT OF TRANSPORTATION

Agreements Filed Under Sections 408, 409, 412 and 414 During the Week Ending November 22, 1985

Answers may be filed within 21 days from the date of filing.

Date filed	Docket No	Parties	Subject	Proposed effective date
11/21/85	43604	Members of International Air Transport Association.	Adjustment Factors—Africa-TC3 Fares.	01/01/86
11/21/85	43605	Members of International Air Transport Association.	Spouse Fares Europe West Africa.	12/01/85
11/21/85	43606 R-1—R-8	Members of International Air Transport Association.	Mid-Atlantic-Europe/Mid East/Africa South Atlantic-Europe/Africa Fares.	12/01/85-01/01/86

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 85-28674 Filed 12-2-85; 8:45 am]

BILLING CODE 4910-62-M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q of Department of Transportation's Procedural Regulations; Week Ended November 22, 1985

Subpart Q Applications

The due date for answers conforming application, or motions to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show cause order, a tentative order, or in appropriate cases a final order without further procedings. (See, 14 CFR 302.1701 et seq.)

Date filed	Docket No.	Description
Nov. 18, 1985	43597	Suncoast Airlines, Inc., c/o Allan W. Markham, 2733 36th Street, N.W., Washington, D.C. 20007. Application of Suncoast Airlines, Inc., pursuant to section 401 of the Act of Subpart Q of the Act requests a certificate of public convenience and necessity authorizing it to engage in foreign charter air transportation between points in the United States points in the Caribbean Sea, Central America, and South America. Conforming Applications, Motions to Modify Scope and Answers may be filed by December 16, 1985.
Nov. 20, 1985	43602	Skycraft Air Transport Inc., c/o Wayne Juniper, 1000 Stevenson Road North, Oshawa, Ontario, Canada. Application of Skycraft Air Transport Inc., pursuant to section 402 of the Act and Subpart Q of the Regulation requests a foreign air carrier permit to operate a Class III service between the points, Oshawa, Ontario, Canada, and Detroit, Michigan, United States. Answers may be filed by December 18, 1985.
Nov. 22, 1985	43609	Eastern Air Lines, Inc., c/o Robert N. Duggan, 1030 15th Street, N.W., Washington, D.C. 20005. Application of Eastern Air Lines, Inc., pursuant to section 401 of the Act and Subpart Q of the Regulations applies for a new or amended certificate of public convenience and necessity to permit Eastern to engage in the air transportation of persons property and mail between the coterminal points Miami and Tampa, Florida, and the terminal point Mexico City, Mexico. Answers may be filed by December 6, 1985. (Conforming Application to Docket 43527)
Do	43612	Virgin Atlantic Airways Limited, c/o Judith Richards Hope, Paul, Hastings, Janofsky & Walker, 1050 Connecticut Avenue, N.W., Twelfth Floor, Washington, D.C. 20036. Application of Virgin Atlantic Airways Limited pursuant to section 402 of the Act and Subpart Q of the Regulations requests an amendment of its foreign air carrier permit to perform scheduled combination air transportation of passengers, cargo and mail between London (Gatwick), England, and Miami, Florida. Answer may be filed by December 20, 1985.
Nov. 20, 1985	43487	The Lord's Airline, Inc., c/o Harry A. Bowen, Bowen & Atkin, 2020 K Street, N.W., Suite 350, Washington, D.C. 20006. Supplemental Information of The Lord's Airline, Inc., furnished in Response to Order 85-11-7. Answers may be filed by December 18, 1985.
Nov. 22, 1985	43435	Wright Air Lines, Inc. (NV), c/o James M. Burger, McCamish, Ingram, Martin, Brown & McCullough, 2828 Pennsylvania Ave., N.W., Washington, D.C. 20007. Response of Wright Air Lines, Inc. (NV), to Order 85-10-55. Answers may be filed by December 20, 1985.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 85-28675 Filed 12-2-85; 8:45 am]

BILLING CODE 4910-62-M

Larry's Flying Service, Inc.; Application for Certificate Authority Under Subpart Q

AGENCY: Department of Transportation.

ACTION: Notice of Order to Show Cause, (Order 85-11-68) Docket 43099..

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding Larry's Flying Service fit and awarding it a certificate of public convenience and necessity to engage in scheduled interstate and overseas air transportation.

DATES: Persons wishing to file objections shall do so no later than December 17, 1985.

ADDRESSES: Objections and answers to objections should be filed in Docket 43099 and addressed to the Documentary Services Division (C-55, Room 4107), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, and should be served upon the persons listed in Appendix B to the order.

FOR FURTHER INFORMATION CONTACT: William J. Wagner, Aviation Enforcement and Proceedings (C-70, Room 4116), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 426-7631.

Dated: November 26, 1985.

Mathew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 85-28676 Filed 12-2-85; 8:45 am]

BILLING CODE 4910-62-M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 232
Tuesday, December 3, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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Federal Reserve System	4
International Trade Commission	5
Nuclear Regulatory Commission	6

1

FEDERAL ENERGY REGULATORY COMMISSION

November 27, 1985.

The following notice of meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94-409), 5 U.S.C. 552B:

TIME AND DATE: December 4, 1985, 10:00 a.m.

PLACE: 825 North Capitol Street, NW., Room 9306, Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

*Note.—Items listed on the agenda may be deleted without further notice.

CONTRACT PERSON FOR MORE INFORMATION: Kenneth F. Plumb, Secretary, Telephone (202) 357-8400.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Division of Public Information.

Consent Power Agenda, 825th Meeting—December 4, 1985, Regular Meeting (10:00 a.m.)

CAP-1.
Project No. 3856-004, Reed Hydro-Electric Corporation
CAP-2.
Project No. 4720-002, The city of Farmington, New Mexico
CAP-3.
Omitted
CAP-4.
Project No. 6913-002, Weber Basin Water Conservancy District
CAP-5.
Project No. 8929-001, Modular Hydro Research Corporation
CAP-6.
Project No.4456-002, Zoes J. Dimos and James C. Katsekas
CAP-7.
Project No. 2088-014, Oroville-Wyandotte Irrigation District
CAP-8.
Project No. 2574-002, Milstar Manufacturing Corporation
CAP-9.
Project No. 7848-002, Michiana Hydro-Electric Power Corporation
CAP-10.
Project No. 2814-005, Paterson Municipal Utilities Authority and Great Falls Hydroelectric Company
CAP-11.
Project No. 3288-008, Puget Sound Power and Light Company
CAP-12.
Project No. 8934-001, Streamline Hydro, Inc.
CAP-13.
Project No. 8835-001, Dewey B. Smith
CAP-14.
Project No. 7377-009, Renewable resource Development and Hat Creek Corporation
CAP-15.
Project No. 8764-000, San Gabriel Hydroelectric Partnership
CAP-16.
Project No. 5878-000, Ithaca Falls Development Association
Project No. 5928-000, Cornell University
Project No. 6744-000, City of Ithaca, New York
CAP-17.
Project No. QF85-536-000, General Conservation Company of Sparrows Point, Inc.
CAP-18.
Docket No. EL85-39-001, Municipal Electric Utilities Association of New York State v. Consolidated Edison Company of New York, Inc.
CAP-19.
Docket No. ER85-728-002, Arizona Public Service Company
CAP-20.
(A) Docket No. ER85-692-002, Southwestern Electric Power Company
(B) Docket Nos. ER85-424-004, ER85-425-003 and ER85-534-004, Southwestern Electric Power Company
CAP-21.
Docket No. ER85-793-001, Central Illinois Public Service Company
CAP-22.
Docket No. ER85-720-001, et al., Connecticut Light & Power Company
CAP-23.
Docket No. ER88-25-000, Pacific Power and Light Company
CAP-24.
Docket No. ER86-34-000, New York Power Pool
CAP-25.
Docket Nos. ER85-204-004 and ER85-603-003, South Carolina Generating Company, Inc.

Consent Miscellaneous Agenda

CAM-1.
Docket No. FA84-12-000, Pennsylvania Power & Light Company
CAM-2.
Omitted
CAM-3.
Docket No. RM79-76-216 (Texas-39), High-Cost Gas Produced From Tight Formations
CAM-4.
Docket No. GP85-43-000, Conoco, Inc.
CAM-5.
Docket No. RO84-15-000, Keystone Fuel Oil Company
CAM-6.
Docket No. GP80-43-005 (Phase I), Northern Natural Gas Company
CAM-7.
Docket No. RM85-1-000 (Parts A-D), regulation of natural gas pipelines after partial wellhead decontrol (Valley Gas Company)
CAM-8.
Docket No. RM85-1-000 (Parts A-D), regulation of natural gas pipelines after partial wellhead decontrol (Judel Glassware Company, Inc., Creole Gas Pipeline Corporation, Northwest Central Pipeline Corporation and Montco Gas, Methanol Production Company, Power-Tex, GGSI Gathering and Processing Company, Texas Gas Transmission Corporation, McMoran Oil and Gas Company, Pride Energy Pipeline of Kentucky Corporation, Transcontinental Gas Pipe Line Corporation, Southern Gas Pipeline Company and Victoria Gas Corporation)
CAM-9.
Docket Nos. CP84-15-000 and 001, Michigan Consolidated Gas Company
Docket No. RM85-1-000 (Parts A-D), regulation of natural gas pipelines after partial wellhead decontrol
CAM-10.
Docket No. RM85-1-000 (Parts A-D), regulation of natural gas pipelines after partial wellhead decontrol (Kansas Pipeline Company, L.P.)

Consent Gas Agenda

CAG-1.
Docket Nos. RP86-16-000 and RP86-17-000, Northwest Pipeline Corporation
CAG-2.
Docket No. TA86-1-43-002 (PGA86-1a), Northwest Central Pipeline Corporation
CAG-3.
Docket Nos. TA85-4-1-000, 001, TA85-5-1-000, 001, TA86-1-1-000 and 001, Alabama-Tennessee Natural Gas Company
CAG-4.
Docket No. TA85-2-27-002, North Penn Gas Company
CAG-5.
Docket No. TA86-2-37-002, Northwest Pipeline Corporation
CAG-6.

Docket No. RP83-109-001, Tennessee Gas Pipeline Company, a division of Tenneco Inc. v. Chevron/U.S.A Inc., et al.
CAG-7.
Docket No. RP85-181-000, Texas Gas Transmission Corporation
CAG-8.
Docket Nos. TA85-2-9-007, 008, 009, TA85-3-9-002 and RP80-97-051, Tennessee Gas Pipeline Company, a division of Tenneco Inc.
CAG-9.
Omitted.
CAG-10.
Docket No. TA85-2-21-004, Columbia Gas Transmission Corporation
CAG-11.
Docket Nos. RP83-35-038 through 041, Texas Eastern Transmission Corporation
CAG-12.
Docket No. RP85-170-000, Texas Eastern Transmission Corporation
CAG-13.
Docket No. RP86-5-000, North Penn Gas Company
CAG-14.
Docket No. RP86-12-000, Lawrenceburg Gas Transmission Corporation
CAG-15.
Docket No. RP86-8-000, Transwestern Pipeline Company
CAG-16.
Docket No. RP85-170-001, Texas Eastern Transmission Corporation
CAG-17.
Docket Nos. TA85-2-9-006 and TA86-1-9-000, Tennessee Gas Pipeline Company, a division of Tenneco Inc.
CAG-18.
Docket No. TA85-3-52-000 (PGA85-3), Western Gas Interstate Company
CAG-19.
Docket No. RP84-87-000, Mississippi River Transmission Corporation v. United Gas Pipe Line Company
CAG-20.
Docket Nos. RP85-13-000, RP85-65-000 and TA85-2-37-002 (not consolidated), Northwest Pipeline Corporation
CAG-21.
Docket Nos. ST83-429-001, ST81-106-001, ST82-193-001, 002, ST82-194-001, 002, ST82-195-001, 002, ST83-50-001, ST83-327-001, ST83-481-000, ST83-634-000, 001, ST84-101-000, 001, ST84-218-000, ST84-219-000, ST84-524-000, 001, ST84-1138-000, ST85-70-000, ST85-71-000, ST83-141-000, 001, ST83-441-000, 001, ST84-165-000, ST84-728-000, ST85-1116-000, ST85-1221-000, ST85-1224-000, ST85-1607-000, ST85-1608-000, ST85-1982-000, ST85-815-000 and ST85-1524-000, Producer's Gas Company
CAG-22.
Docket Nos. OR79-1-026 through 031, Williams Pipe Line Company
CAG-23.
Docket Nos. CP81-75-008, CP85-247-001, CP85-248-001, CP85-249-001 and CP85-250-001, Northern Natural Gas Company, Division of Internorth, Inc.
CAG-24.
Docket No. CP83-14-121, Northern Natural Gas Company, division of Internorth, Inc.
CAG-25.
Docket No. CP83-333-025, Panmark Gas Company, et al.
CAG-26.
Docket No. CP85-318-001, Trunkline Gas Company
CAG-27.
Docket No. CP85-447-001, Colorado Interstate Gas Company
CAG-28.
Docket Nos. CP85-353-000 and 001, Columbia Gas Transmission Corporation
CAG-29.
Docket No. CP85-517-000, Columbia Gas Transmission Corporation
CAG-30.
Docket No. CP85-719-000, United Gas Pipe Line Company
CAG-31.
Docket No. CI85-400-001, Vesta Energy Company
Docket No. CI86-33-000, Sun Exploration and Production Company
Docket No. CI86-41-000, Energy Consultants, Inc.
Docket No. CI86-42-000, PNG Energy Company
Docket No. CI86-43-000, the Louisiana Land and Exploration Company and Louisiana Land Offshore Exploration Company, Inc.
Docket No. CI86-45-000, Union Oil Company of California and Union Exploration Partners, Inc.
Docket No. CI86-51-000, Anadarko Production Company
Docket No. CI86-53-000, Cheney Energy Corporation
Docket No. CI86-56-000, Citizens Energy Corporation and Citizens Resources Corporation

I. Licensed Project Matters

P-1.
Reserved

II. Electric Rate Matters

ER-1
Docket No. ER85-785-000, Wisconsin Electric Power Company
ER-2
(A) Docket No. QF84-112-001, E. I. du Pont de Nemours and Company
(B) Docket No. QF84-381-001, International Paper Company Natchez Mill

Miscellaneous Agenda

M-1. Reserved
M-2. Reserved

I. Pipeline Rate Matters

RP-1.
Docket No. ST82-319-008, Tennessee Gas Pipeline Company, a division of Tenneco Inc.
Docket No. CP82-361-008, Tennessee Gas Pipeline Company, a division of Tenneco Inc.
RP-2.
Docket No. TA85-2-11-002, United Gas Pipe Line Company
RP-3.
Docket Nos. TA82-1-21-001, TA82-2-21-000, TA83-1-21-001, 002, TA83-2-21-000, TA84-1-21-001, TA84-2-21-001, TA85-1-21-000, RP82-120-000, 004, TA81-1-21-003, TA81-2-21-006 (severed cutback issues), RP84-75-000, CP84-2-000, RP81-83-000, RP82-88-000 and GP82-41-000, Columbia Gas Transmission Corporation
Docket Nos. RP81-82-000, RP82-119-000 and RP84-74-000, Columbia Gulf Transmission Company
Docket Nos. CP84-209-000 through 013, Lawrenceburg Gas Transmission Corporation and Texas Gas Transmission Corporation
Docket No. CP84-763-000, Columbia Gas Transmission Corporation v. Consolidated Gas Transmission Corporation
Docket No. CP85-191-000, Cincinnati Gas and Electric Company
Docket No. CP84-630-000, Lawrenceburg Gas Transmission Corporation
Docket No. CP84-631-000, Lawrenceburg Gas Transmission Corporation
Docket No. CP84-533-000, Columbia Gas Transmission v. Transcontinental Gas Pipel Line Corporation
Docket Nos. CP84-429-000 and 001, Texas Eastern Transmission Corporation
Docket Nos. RP83-8-000 and CP84-441-000 through 003, Tennessee Gas Pipeline Company, a division of Tenneco Inc.

II. Producer Matters

CI-1.
Docket No. CI84-10-000, Felmont Oil Corporation and Essex Offshore, Inc.

III. Pipeline Certificate Matters

CP-1.
Reserved

Lois D. Cashell,

Acting Secretary.

[FR Doc. 85-28800 Filed 11-29-85; 12:03 pm]

BILLING CODE 6717-01-M

2

FEDERAL ENERGY REGULATORY COMMISSION

November 27, 1985.

The following notice of meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94-409), 5 U.S.C. 552B:

TIME AND DATE: December 10, 1985, 9:00 a.m.

PLACE: 825 North Capitol Street, NE., Hearing Room A, Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

*Note.—Item listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Kenneth F. Plumb, Secretary, Telephone (202) 357-8400.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the division of Public Information.

Consent Miscellaneous Agenda

CAM-1.

Docket No. RM–85–1–000 (Parts A–D), regulation of natural gas pipelines after partial wellhead decontrol (Entrade Corporation)
CAM–2.
Docket No. RM85–1–000 (Parts A–D), regulation of natural gas pipelines after partial wellhead decontrol (Southern Natural Gas Company)
CAM–3.
Docket No. RM85–1–000 (Parts A–D), regulation of natural gas pipelines after partial wellhead decontrol (Mountain Fuel Resources, Inc.)
CAM–4.
Docket No. RM–85–1–000 (Parts A–D), regulation of natural gas pipelines after partial wellhead decontrol (Southern Natural Gas Company)
CAM–5.
Docket No. RM–85–1–000 (Parts A–D), regulation of natural gas pipelines after partial wellhead decontrol (Industrial Groups)
CAM–6.
Docket No. RM–85–1–000 (Parts A–D), regulation of natural gas pipelines after partial wellhead decontrol (Berkshire Gas Company)
CAM–7.
Docket No. RM–85–1–000 (Parts A–D), regulation of natural gas pipelines after partial wellhead decontrol (Midwestern Gas Transmission Company)
CAM–8.
Docket No. RM–85–1–000 (Parts A–D), regulation of natural gas pipelines after partial wellhead decontrol (J.R. Simplot Company)
CAM–9.
Docket No. RM–85–1–000 (Parts A–D), regulation of natural gas pipelines after partial wellhead decontrol (Natural Gas Pipeline Company of America)

Miscellaneous Agenda

M–1.
Docket Nos. RM–85–1–000, through 136 (Parts A–C), regulation of natural gas pipelines after partial wellhead decontrol

Lois D. Cashell,

Acting Secretary.

[FR Doc. 85–28801 Filed 11–29–85; 12:03 p.m]

BILLING CODE 6717–01–M

3

FEDERAL HOME LOAN BANK BOARD

TIME AND DATE: Monday, December 9, 1985, at 10:30 a.m.

PLACE: In the Board Room, 6th Floor, 1700 G St., N.W., Washington, DC.

STATUS: Open Meeting.

CONTACT PERSON FOR MORE INFORMATION: Ms. Gravlee (202–377–6679).

MATTERS TO BE CONSIDERED:

Classification of Assets
Finance Subsidiaries

Jeff Sconyers,

Secretary.

No. 33, November 27, 1985.

[FR Doc. 85–28724 Filed 11–27–85; 4:27 pm]

BILLING CODE 6720–01–M

4

FEDERAL RESERVE SYSTEM

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 50 FR 48293, November 22, 1985.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10:00 a.m., Wednesday, November 27, 1985.

CHANGES IN THE MEETING: One of the items announced for inclusion at this meeting was consideration of any agenda items carried forward from a previous meeting; the following such closed item(s) was added:

Federal Reserve Bank and Branch director appointments. (This item was originally announced for a closed meeting on November 7, 1985.)

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: November 27, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85–28778 Filed 11–29–85; 10:12 am]

BILLING CODE 6210–01–M

5

INTERNATIONAL TRADE COMMISSION

TIME AND DATE: Friday, December 13, 1985, at 11:00 a.m.

PLACE: Room 117, 701 E Street, NW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratification List.
4. Petitions and Complaints:
   (a) Portable bag sewing machines (Docket Number 1258).
5. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 523–0161.

Dated: November 27, 1985.

Kenneth R. Mason,

Secretary.

[FR Doc. 85–28822 Filed 11–29–85; 1:41 pm]

BILLING CODE 7020–02–M

6

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of December 2, 9, 16, and 23, 1985.

PLACE: Commissioners' Conference Room 1717 H Street, NW., Washington, DC.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of December 2

Wednesday, December 4

2:00 p.m.
Affirmation Meeting (Public Meeting) (if needed)

Week of December 9—Tentative

Monday, December 9

10:00 a.m.
Discussion of Threat Level and Physical Security (Closed—Ex. 1)
2:00 p.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6)

Tuesday, December 10

9:30 a.m.
Periodic Briefing on NTOLs (Open/Portion may be Closed—Ex. 5 & 7)
2:30 p.m.
Review of Enforcement Policy (Public Meeting)

Wednesday, December 11

10:00 a.m.
Briefing on Policy Statement on Nuclear Power Plant Standardization (Public Meeting)
2:00 p.m.
Discussion of Pending Investigations (Closed—Ex. 5 & 7)

Thursday, December 12

10:00 a.m.
EEO Program Plan—Progress Report (Public Meeting)
2:00 p.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6)
3:30 p.m.
Affirmation Meeting (Public Meeting) (if needed)

Week of December 16—Tentative

Tuesday, December 17

10:00 a.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6)
2:00 p.m.
Briefing on Nuclear Employee Data System (NEDS) (Public Meeting)

Wednesday, December 18

10:00 a.m.
Briefing on Status of Davis-Besse (Public Meeting)
3:30 p.m.
Affirmation Meeting (Public Meeting) (if needed)

Week of December 23—Tentative

Tuesday December 24

10:00 a.m.

Affirmation Meeting (Public Meeting) (if needed)

ADDITIONAL INFORMATION: Affirmation of "Revised Environmental Qualification Extention Request Post-November 30, 1985 for the Pilgrim Nuclear Power Station" and "Environmental Qualification Extension of the November 30, 1985 Deadline for the Fort St. Vrain Nuclear Generating Station" (Public Meeting) was held on November 26.

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING): (202) 634–1498.

CONTACT PERSON FOR MORE INFORMATION: Julia Corrado, (202) 634–1410.

Julia Corrado,

Office of the Secretary.

November 27, 1985.

[FR Doc. 85–28726 Filed 11–27–85; 4:52 pm]

BILLING CODE 7590–01–M

federal register

Tuesday
December 3, 1985

Part II

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Part 31

Federal Acquisition Regulation (FAR); Employee Morale, Health, Welfare, Food Services, and Dormitory Costs and Credits; and Compensation for Personal Services and Industrial Security Costs; Proposed Rules

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 31

Federal Acquisition Regulation (FAR); Employee Morale, Health, Welfare, Food Services, and Dormitory Costs and Credits

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are considering a change to Federal Acquisition Regulation (FAR) 31.205–13, Employee morale, health, welfare, food service, and dormitory costs and credits.

DATE: Comments should be submitted to the FAR Secretariat at the address shown below on or before February 3, 1986, to be considered in the formulation of a final rule.

ADDRESS: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets NW., Room 4041, Washington, DC 20405.

Please cite FAR Case 85–55 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Ms. Margaret A. Willis, FAR Secretariat, Telephone (202) 523–4755.

SUPPLEMENTARY INFORMATION:

A. Background

The Defense Acquisition Regulatory Council and the Civilian Agency Acquisition Council are considering a change to FAR 31.205–13, Employee morale, health, welfare, food service, and dormitory costs and credits, which will expand the areas to be considered in the administration of the cafeteria and dormitory break-even requirement currently contained in 31.205–13(b). There are indications that literal readings of the current coverage may be promoting decisions that do not sufficiently consider the impact that cafeteria shutdowns or volume reductions may have upon labor cost and efficiency. The revisions are also intended to restore the meaning and intent of the language that appeared in predecessor coverage of this topic but may have been inadvertently changed in the process of converting to the FAR.

B. Regulatory Flexibility Act

This proposed change to FAR 31.205–13(b) is not expected to have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) because—

(a) It merely elaborates on factors to consider in determining the reasonableness of contractor decisions;

(b) It will not impose any additional recordkeeping requirements; and

(c) It will not cause additional costs in order to comply.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this proposed rule does not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501 et seq.

List of Subjects in 48 CFR Part 31

Government procurement.

Dated: November 27, 1985.

Lawrence J. Rizzi,

Director, Office of Federal Acquisition and Regulatory Policy.

Therefore, it is proposed that 48 CFR Part 31 be amended as follows:

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

1. The authority citation for Part 31 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137, and 42 U.S.C. 2453(c).

2. Section 31.205–13 is amended by revising paragraph (b) to read as follows:

31.205–13 Employee morale, health, welfare, food service, and dormitory costs and credits.

* * * * *

(b) Losses from operating food and dormitory services may be included as costs only if the contractor's objective is to operate such services on a break-even basis. Losses sustained because food services or lodging accommodations are furnished without charge or at prices or rates which obviously would not be conducive to the accomplishment of the above objective are not allowable. A loss may be allowed, however, to the extent that the contractor can demonstrate that unusual circumstances exist (e.g., (1) where the contractor must provide food or dormitory services at remote locations where adequate commercial facilities are not reasonably available, (2) where charged but unproductive labor costs would be excessive but for the services provided and where cessation of food or dormitory operations will not yield net cost savings, or (3) where it is necessary to operate a facility at a lower volume than the facility could economically support such that, even with efficient management, operating the services on a break-even basis would require charging inordinately high prices, or prices or rates higher than those charged by commercial establishments offering the same services in the same geographical areas.) Costs of food and dormitory services shall include an allocable share of indirect expenses pertaining to these activities.

* * * * *

[FR Doc. 85–28781 Filed 12–2–85; 8:45 am]

BILLING CODE 6820–61–M

48 CFR Part 31

Federal Acquisition Regulation (FAR); Compensation for Personal Services and Industrial Security Costs

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are considering a revision to Federal Acquisition Regulation (FAR) 31.205–6, Compensation for personal services.

DATE: Comments should be submitted to the FAR Secretariat at the address shown below on or before February 3, 1986, to be considered in the formulation of a final rule.

ADDRESS: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets NW., Room 4041, Washington, DC 20405.

Please cite FAR Case 85–54 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Ms. Margaret A. Willis, FAR Secretariat, Telephone (202) 523–4755.

SUPPLEMENTARY INFORMATION:

A. Background

The Defense Acquisition Regulatory Council and Civilian Agency Acquisition Council are considering a change to FAR 31.205–6(b) concerning the reasonableness of compensation costs for personal services to elaborate on the assessment of reasonableness of compensation paid to contractor employees. The Councils have concluded that the reasonableness of compensation should be based primarily upon an evaluation of individual elements. However, within certain

specified limits, other compensation elements may be considered when an individual element has been challenged.

B. Regulatory Flexibility Act

This proposed rule sets forth criteria for compensation cost reasonableness determinations in acquisitions where the commercial cost principles are a factor in determining costs. It is not expected to have a significant economic impact on a substantial number of small entities since it merely provides (a) an evaluation tool (for judging the reasonableness of costs) that should be a factor in establishing prudent compensation levels, and (b) a framework for dealing with possible Government challenges of cost reasonableness. Therefore, a regulatory flexibility analysis has not been prepared.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this proposed rule does not impose any additional reporting of recordkeeping requirements on the public which require the approval of OMB under 44 U.S.C. 3501 et. seq.

List of Subjects in 48 CFR Part 31

Government Procurement.

Dated: November 27, 1985.

Lawrence J. Rizzi,

Director, Office of Federal Acquisition and Regulatory Policy.

Therefore, it is proposed that 48 CFR Part 31 be amended as follows:

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

1. The authority citation for Part 31 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137, and 42 U.S.C. 2453(c).

2. Section 31.205–6 is amended by revising paragraph (b) as follows:

§ 31.205–6 Compensation for personal services.

* * * * *

(b) *Reasonableness.* (1) The compensation for personal services paid or accrued to each employee must be reasonable for the work performed. Compensation will be considered reasonable if each of the allowable elements making up the employee's compensation package is reasonable. In determining the reasonableness of individual elements for particular employees or classes of employees, consideration should be given to all potentially relevant facts. Facts which may be relevant include general conformity with the compensation practices of other firms of the same size, the compensation practices of other firms in the same industry, the compensation practices of other firms in the same geographic area, the compensation practices of firms engaged in predominantly non-Government work, and the cost of comparable services obtainable from outside sources. While all of the above factors should be considered, their relative significance will vary according to circumstances. For example, in the case of secretarial salaries, conformity with the compensation paid by other firms in the same geographic area would likely be a more significant criterion than conformity with the compensation paid by other firms in the same industry wherever located. In administering this principle, it is recognized that not every compensation case need be subjected in detail to the above tests. The tests need be applied only when a general review reveals amounts or types of compensation that appear unreasonable or unjustified. Contracting officers or their representatives may challenge the reasonableness of any individual element or the sum of the individual elements of compensation paid or accrued to particular employees or classes of employees. In such cases, there is no presumption of reasonableness and, upon challenge, the contractor must demonstrate the reasonableness of the compensation item in question. In doing so, the contractor may introduce, and the contracting officer will consider, not only any circumstances surrounding the compensation item challenged, but also the magnitude of other compensation elements which may be lower than would be considered reasonable in themselves. For example, a contractor, if challenged on the amount of base salaries for management, could counter by showing lower than normal end-of-year management bonuses. However, the contractor's right to introduce offsetting compensation elements into consideration is subject to the following limitations:

(i) Offsets will be considered only between the allowable elements of an employee's (or a class of employees') compensation package. For example, excessive management salaries cannot be offset against lower than normal secretarial salaries.

(ii) Offsets will be considered only between the allowable portion of the following compensation elements of employees or within classes of employees: wages and salaries, incentive bonuses, deferred compensation, pension and savings plan benefits, health insurance benefits, life insurance benefits, and compensated personal absence benefits. However, any of the above elements or portions thereof, whose amount is not measurable, shall not be introduced or considered as an offset item.

(iii) In considering offsets, the magnitude of the compensation elements in question must be taken into account. An executive bonus that is excessive by $100,000 is not fully offset by a base salary that is low by only $25,000. In determining the magnitude of compensation elements, the timing of receipt by the employee must be considered. For example, a bonus of $100,000 in the current period will be considered as of greater value than a deferred compensation arrangement to make the same payment in some future period.

(2) Compensation costs under certain conditions give rise to the need for special consideration. Among such conditions are the following:

(i) Compensation to (A) owners of closely held corporations, partners, sole proprietors, or members of their immediate families, or (B) persons who are contractually committed to acquire a substantial financial interest in the contractor's enterprise. Determination should be made that salaries are reasonable for the personal services rendered rather than being a distribution of profits. Compensation in lieu of salary for services rendered by partners and sole proprietors will be allowed to the extent that is reasonable and does not constitute a distribution of profits. For closely held corporations, compensation costs covered by this subdivision shall not be recognized in amounts exceeding those costs that are deductible as compensation under the Internal Revenue Code and regulations under it.

(ii) Any change in a contractor's compensation policy that results in a substantial increase in the contractor's level of compensation, particularly when it was concurrent with an increase in the ratio of Government contracts to other business, or any change in the treatment of allowability of specific types of compensation due to changes in Government policy. No presumption of reasonableness will exist where major revisions of existing compensation plans or new plans are introduced by the contractor; and the contractor—

(A) Has not notified the cognizant ACO of the changes either before their implementation or within a reasonable period after their implementation; and

(B) Has not provided the Government, either before implementation or within a reasonable period after it, an

opportunity to review the reasonableness of the changes.

(iii) The contractor's business is such that its compensation levels are not subject to the restraints that normally occur in the conduct of competitive business.

(iv) The contractor incurs costs for compensation in excess of the amounts which are deductible under the Internal Revenue Code and regulations issued under it.

* * * * *

[FR Doc. 85-28762 Filed 12-2-85; 8:45 am]
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Federal Register

Vol. 50, No. 232

Tuesday, December 3, 1985

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